

The Returns to Hedge Fund Activism : An International Study

Marco Becht

Solvay Brussels School, Université Libre de Bruxelles, CEPR and ECGI

Julian Franks

London Business School, CEPR and ECGI

Jeremy Grant

London Business School

revised 11 April, 2013

We acknowledge research support from the ESRC (Grant No. R060230004), the London Business School's Centre for Corporate Governance, the BNP Paribas Hedge Fund Centre and the PEGGED (Politics, Economics and Global Governance: The European Dimensions) collaborative research project supported by the Seventh Framework Programme for Research and Technological Development (Contract no. SSH7-CT-2008-217559). We are grateful to participants at seminars at the London Business School, The Transatlantic Corporate Governance Dialogue (TCGD) in Washington D.C. in December 2011, The EU-ASIA Corporate Governance Dialogue Inaugural Conference in Tokyo in June 2012.

The Returns to Hedge Fund Activism : An International Study

Abstract

The paper analyses nearly 1800 interventions by shareholder activists in Europe, Asia and North America. The interventions are by hedge funds, focus funds and other activist investors. The European sample includes public interventions collected over the period 2000-2010 and private interventions, where the private interventions are based upon proprietary data collected from five activist funds over the period 1997-2010. There are large abnormal returns to shareholder activism at the disclosure stage of around 7.5% across all three continents. There are additional abnormal returns post disclosure to exit for both the European and North American samples. The results for Europe and North America reflect the much higher level of outcomes and the high incidence of takeovers of targets; takeovers result in higher returns than any other outcome. However, activist returns decline significantly post Lehman's, reflecting in part the collapse of takeover activity. Private activism is extensive and more profitable than public activism if the takeover outcomes are excluded. The types of engagement outcomes vary across countries. In Japan, activists focus particularly on increasing payout whereas in the US it is putting companies into play and attracting bidders.

JEL Classification: G32

Key words: Shareholder activism, hedge funds, active ownership, institutional investors

I. Introduction

The paper analyses 1795 activist interventions mainly by hedge funds and focus funds for Asia, Europe and North America. The large majority of these interventions were collected from public sources; in addition, we have obtained data on 131 European interventions from five activist funds which have provided the authors with proprietary information; of these interventions 57 were not made public either during or subsequent to the intervention. The public database was collected from the period 2000 to 2010, while the proprietary data was collected from 1997 to 2010.

The paper provides buy and hold abnormal returns for the engagement period for both public and private activism across different countries and legal jurisdictions. It decomposes the buy and hold returns over the holding period into returns associated with the initial disclosure of the share stake and the returns post disclosure to exit from the engagement. It compares those returns partitioned by the style of investor, the degree of hostility and whether the engagement was successful in achieving at least one outcomes; those outcomes include takeovers, asset sales, board changes and increases in payout.

The mean (median) activist stake in the target is 11.2% (8.9%) and does not vary significantly across jurisdictions. The typical engagement is with a widely held company and stakes of this size provide a sufficient toehold to build coalitions. However, companies in Continental Europe are often controlled by insiders with stakes averaging about 23%. These companies were also engaged, but often in cooperation with the blockholder. These engagements are more likely to be private rather than public.

The disclosure abnormal returns are about 7.5% for all three regions, Asia, North America and Europe. Those buy and hold returns are measured relative to various benchmarks including a country market index-adjusted model, a market model, and a Fama French four factor model. The US returns are comparable to announcement abnormal returns around 13D filings reported by Brav, Jiang, Partnoy, and Thomas (2008) and Klein and Zur (2008), of 7.2% and 5.7%, respectively. The Asian returns, which largely relate to Japan, are substantially larger than those in Hamao, Kutsuna and Matos (2010) who define activism more broadly to include engagements by

investors we do not consider “hedge fund” activists.

We would expect that post disclosure buy and hold abnormal returns would on average be zero since the disclosure announcement should capture expectations about the future value of the engagement. In fact, post-disclosure returns for both Europe and North America are large and statistically significant and the results are robust to different benchmarks; for Asia the size and sign of the abnormal returns are not robust to the different models used. One reason for the much smaller post disclosure returns for Japan is the low level of success in producing engagement outcomes. However, at least for Europe and North America the market at the date of the disclosure of the share stake appears to systematically underestimate the probability of success.

For successful engagements with at least one observable outcome post-disclosure median returns are much higher for all three continents than those without outcomes. The differences are particularly large for engagements which result in takeovers. The evidence of lower returns for engagements without outcomes suggests that where the hedge fund fails to change the target firm's strategy the engagement is significantly less profitable.

In Japan the pattern of outcomes is very different from those in other countries. There are far fewer successful outcomes and demands for a higher payout are far more prominent than elsewhere. For example, TCI (a UK activist) held a stake in J-Power and demanded that the company triple its dividends; similarly, in July 2012 TCI demanded that Japanese Tobacco raise its dividend two and half times and repurchase shares. This reflects the very much larger excess cash balances held by Japanese companies compared with those in the US (see Kato, Li and Skinner 2012). Whereas one half of successful outcomes in Japan are payout-related, the proportion in North America is less than 20%.

The returns reported over the eleven year period include the years 2007-8 which show significant abnormal losses to activist funds due to the financial turmoil following the collapse of Lehman Brothers. In the two years 2007-8 there were abnormal returns of about -30 per cent in Europe while in the US it was a more modest -7 percent. This raises the question as to why activist funds so under-performed during that period. It may have been the particular stocks purchased

by the funds, for example stocks subject to a high probability of a takeover fell heavily during the crisis as takeover activity collapsed and takeover premiums disappeared. Also, the flight to safety may have caused heavy investor withdrawals forcing distressed sales of stakes in a falling and often illiquid market.

One contribution of this paper is the comparison of returns of private activism with public activism for more than one fund. Investigating private activism is important because, when it is combined with public activism, it provides a better measure of the overall level of activity. It also allows us to examine the issue of whether private engagements are more profitable than public and hostile engagements, rather like the comparison with hostile versus agreed takeovers (although not all public engagements are hostile and private friendly). Using the proprietary database only, the buy and hold abnormal returns for private engagements are a little below those of public engagements, however, that difference is entirely driven by the higher number of takeovers in the public database, 24% of public engagements compared with only 1.9% of private engagements. This is likely to be endogenous since M&A restructurings will often be opposed by incumbent management and will lead to public [hostile] engagements.

There are several important differences between this paper and the current literature, in particular Brav, Jiang, Partnoy, and Thomas (2008), Klein and Zur (2008) and Greenwood and Schor (2009) who all focus on U.S. companies and base their results on public data. The evidence is far more limited outside the U.S.

This paper analyses a comprehensive multi-jurisdictional database using uniform definitions and benchmarks, thereby making the results comparable internationally. It provides a comprehensive analysis of the outcomes of activism across countries; only Greenwood and Schor (2009) examine outcomes and then confine their study to takeovers. This limitation is particularly important in Europe and Asia where takeovers are less frequent among activist outcomes than in the US. Finally, the private database allows us to examine the extent of private activism and its profitability relative to public activism.

II. Literature Review

The early empirical literature on investor activism is focused on shareholder proposals at shareholder meetings in the United States. This research found little positive empirical evidence linking shareholder activism and corporate performance (see Wahal (1996) and Karpoff (2001)). Many shareholder proposals in these studies failed to achieve a majority of votes; and even when they did, they were often advisory and were ignored by the board. Not surprisingly they achieved low or zero shareholder returns.¹ Shareholder proposals in Europe have been studied by Cziraki, Renneboog and Szilagyi (2010). There are relatively few proposals and although they are binding, mostly fail to receive a majority of the votes. As a result, abnormal returns are on average -2 percent with the exception of 8 proposals on asset restructuring where there is a positive return of 5.9 percent.

Shareholder proposals in Japan are more common than in Europe. Hamao, Kutsuna and Matos (2010) document 916 activist events involving 670 "significant proposals", as defined by Japanese disclosure rules.² In a subset of 234 proposals, the largest number relate to changes in capital structure (87), although the failure rate is high at 62 percent. For Korea, activism through shareholder proposals has been associated with a non-governmental organisation, the People's Solidarity for Participatory Democracy (PSPD). PSPD filed 11 governance related proposals between 1996-2000, with a 45% success rate (Choi and Cho 2003).

The use of engagement methods with potentially higher impact such as a proxy vote is significantly more expensive than filing a shareholder proposal. Due to differences in fee structure, the use of more expensive tactics is largely confined to hedge fund activists. The average management fee for activist funds over the period covered is 2% plus an incentive fee of 20% of the excess returns above a high-water mark. Gantchev (2010) estimates that the average US public activist campaign that reaches the confrontational level of a proxy fight costs \$10.5 millions. He estimates the costs of such confrontations to be about two thirds of gross abnormal returns. Our evidence, collected from client reports of some U.S. activists, suggest somewhat

¹ See Del Guercio and Hawkins (1999), Gillan and Starks (2007), Davis and Useem (2002), Ertimur, Ferri, and Stubben (2008) and Renneboog and Szilagyi (2010).

² After 1 April 2007 the intention to file a "significant shareholder proposal" triggers a block disclosure requirement at the 5% threshold. "Significant" is defined as "appointment and discharge of CEO, significant changes to the composition of directors, rearrangement of organisations such as mergers and acquisitions and going private, significant changes in dividend policy etc." see Hamao et. al. 2010 pg. 12, citing the relevant Japanese Cabinet Order.

lower estimates. For example, Pershing Square state that its high profile proxy fight with the US retailer Target, cost approximately \$3.3m. Georgeson, the proxy advisory firm, estimates that the cost of the average campaign is between \$250,000 and \$1,000,000 in the U.S. and \$200,000 in Japan.

Activist specialists and other hedge fund have the additional advantage of holding relatively few positions although often large in value. They focus on as few as 10 to 30 stocks at any one time. Some are even more specialised, for example Knight Vinke, the European activist fund, invests in as few as four stocks, while the Hermes UK Focus Fund invested in an average of 13 stocks. In contrast, the portfolio construction strategy of most institutional investors makes it optimal for fund managers to hold very large numbers of stocks in their portfolio, often numbering in the thousands.

Hedge fund activism in the United States has been investigated by Brav, Jiang, Partnoy and Thomas (2008) and Klein and Zur (2008). Brav *et. al.* examine 882 interventions by activist hedge funds. Shares in the target companies significantly outperform the market over various time frames. Greenwood and Schor (2009) also document significant abnormal returns for activist targets, but attribute these to activist's ability to force firms into takeover transactions. Hamao, Kutsuna and Matos (2010) analyse a large sample of activist events, composed primarily of engagement through the submission of shareholder proposals, and find insignificant long run returns in Japan. Kruse and Suzuki (2009) examine the returns to one activist, Y. Murakami's and several of his aggressive activist funds. They find large positive abnormal returns for target firms in the two years following engagement.³

These results suggest that hedge fund activism often generates returns for shareholders. It is not always clear what is the source of these gains, efficiency or

³ To some critics activist funds have much in common with the "Corporate Raiders" of the 1980s in the US and 1990s in Europe, and are accused of expropriating private benefits at the expense of other shareholders and bondholders (see Holderness and Sheehan (1985) and Croci (2007)). For example, a number of 1980s raiders, such as Carl Icahn and Nelson Peltz, have resurfaced as activist hedge fund managers in the US and Europe. European activist investors in the current sample include Guy Wyser-Pratte, Vincent Bolloré, Tito Tettamanti (Sterling Investment Group) and Ron Brierley (Guinness Peat Group) who are categorised by Croci (2007) as "Corporate Raiders" in relation to their activities between 1990 and 2001. Yoshiaki Murakami launched the first hostile takeover attempt of a Japanese company by a Japanese investor and failed (see Osaki, 2008). He was found guilty of insider trading in 2006.

wealth transfers from other corporate constituencies. Klein and Zur (2009b) examine the potential wealth transfers from bondholders to shareholders, from forcing higher cash-payouts or increasing the risk profile of the target companies. They find an average abnormal loss to bondholders of -3.9% around the initial 13D filing and a loss of -6.4% over the subsequent year. These losses are reflected in rating downgrades to 29% of their sample and with a 'no rating' given in 49% of the sample subsequent to activist engagements.⁴

The studies of public activism do not capture activism that is conducted "behind closed doors". Such private activism is initiated by both traditional investment vehicles and by hedge funds. In the traditional model, if private activism is successful there will be fewer shareholder proposals. Private activism in the traditional model has been documented by Carleton, Nelson and Weisbach (1998) for the U.S. and for a U.K. hedge fund (focus fund) by Becht, Franks, Mayer and Rossi (2009). Both papers examine the private engagements of one fund only. Carleton et al examined 45 private engagements, and found that in 95% of the cases TIAA-CREF was able to successfully negotiate a settlement of the outstanding governance issue. The study finds that the share price impact for the successful negotiated settlements is small and positive although there are losses on stocks where the engagement is unsuccessful (the losses roughly equal the gains). Becht et al examined 30 engagements of the Hermes UK Focus Fund. The fund was successful in achieving outcomes and produced significant abnormal returns. The fund never filed a shareholder proposal. Interestingly the fund's performance deteriorated sharply during the financial crisis leading to the restructuring of the fund.

III. Data Description

We compiled two databases, a public database covering Asia, Europe and North America and a fund database using proprietary information from five European funds. The public database includes all interventions initiated between 2000 and the end of 2010. The fund database covers the period 1997 to 2008. We also had access to the databases compiled by Greenwood and Schor (2008) and Brav et al. (2008) for the

⁴ Wealth transfers between bondholders and shareholders have been studied elsewhere in the context of mergers and acquisitions (Billett, King, and Mauer, 2004), spinoffs (Maxwell and Rao, 2003) and shifts in payout policy (Dhillon and Johnson, 1994) with similar results.

U.S. covering the periods 1994-2006 and 2001-2006, respectively.⁵ In addition we collect data on the outcomes of the engagements, in particular on takeovers, other types of corporate restructuring, board changes and changes in payout policy.

The data have been collected from various sources. In all jurisdictions regulation requires shareholders to disclose a position when stakes reach a threshold between 1% to 5% of capital and/or voting rights, depending upon the country and the type of security. In the United States we use as our primary source *The 13D Monitor* based upon SEC filings. They have both investment entry and exit dates based upon the 5% threshold disclosure.⁶

In Europe and Asia we use centralised country regulatory filings where available⁷ For those countries where the filings are only released on the news wires, for example in the UK, we rely on Factiva which contains both press and regulatory filings. For all three regions, we searched with a set of keywords which revealed a large number of activist interventions, for which the names of the target company and the funds involved were recorded. The case list was extended by searching under the names of the funds.⁸ Press articles featuring high profile cases would often include references to other interventions undertaken by the same fund. These cases were recorded and separate searches undertaken. For outcomes we rely on Factiva.

The European (proprietary) fund database was compiled from the client reports of five activist funds. The reports contained the names of all the companies that were engaged, including engagements that have not been disclosed to the public, and have never appeared in the public domain. They also record purchase dates, exit dates,

⁵ There are a considerable number of cases in Brav et al. that are not in our database and vice versa. We have examined the first 80 cases alphabetically from Brav et al. and the US public data base (which is our primary source) and found that in 27 cases there is overlap in the two data bases; 19 cases are in the public data base but are not in Brav et al and there are 34 cases that are in Brav et al which are not in the public data base. In 3 cases of apparent no overlap, cusip numbers were changed and the cases are in fact in both data bases.

⁶ Activist 13D filings are collected by “13D Monitor” and the bulk of our database was compiled from the raw data of this service provider.

⁷ There is no centralized database of block disclosure in Europe that would be comparable to the SEC’s Edgar database in the United States. Also, prior to 2007 there was no standardized form in Europe similar to 13D. Disclosure thresholds are 2% in Italy, 3% in the United Kingdom and 5% in the other countries in our sample. Equally, there is no EU-wide fund disclosure document comparable to the US SEC’s Form 13F for reporting the size of portfolio holdings of the fund. A feature of the US 13D is that the purchaser must state the intention of the purchase whereas in Europe this is not the case.

⁸ Press articles focusing on the more important cases would review other intervention undertaken by the funds involved. These cases were duly noted as well and a separate search performed.

engagement intention and outcomes. The public announcement dates of block purchases, outcomes and sales were cross-checked with Factiva.

In the International Public database, the US has 1166 interventions, Japan 186 and the UK 168 (Table 1). Combined, these three countries represent 85% of all public interventions. There are six other countries with at least twenty interventions including Canada, France, Germany, Italy, South Korea and The Netherlands. Table 1 shows the number of public interventions by fund and country in the public database. It lists only funds that have made sixteen interventions or more. No one fund dominates the sample. There are five funds that have at least forty interventions, with Steel Partners having the largest number of interventions at 96. Most funds have a clear geographic specialisation. The most “global” fund is TCI with engagements in all regions. Steel Partners engage in Asia, the United States and the UK but not in Continental Europe.

Table 2 shows the annual number of public engagements that were initiated between 1 January 2000 and 31 December 2010. Of the total of 1795, 1269 engagements had concluded and the exit dates were known, 480 were still ongoing at the end of the 2010, another 46 are known to have ended, but the exact exit date could not be identified; virtually all of the cases without known exit dates are in Continental Europe. The largest number of engagements were initiated between 2004-2008, with a peak in 2007. The largest number of exits are recorded in the period 2006-2009, with the peak in 2008 but with only a small drop-off in 2009. The financial crisis reduced the number of new public cases which fell substantially during 2008 from 2007 levels.

The last two columns of the table shows the average holding period for engagements. For engagements that were exited or still ongoing on 31 December 2010 the mean engagement period is 787 days for Europe, 1013 for Asia, and 705 for the North American sample. The mean holding period for completed engagements is shorter : 713 days for Asia, 645 for Europe and 515 for North America. As one would expect the holding periods for the younger cohorts are shorter because a higher percentage of these engagements is still ongoing.

In the public database the same company can be engaged by several funds, or by the same fund at different points in time. The number of such cases is limited. There are 184 companies that were engaged by two funds; 37 by three and 7 companies by four

funds. Hence there are 1516 companies that were involved in the 1795 engagements in the public database.

Table 3 reports the size of disclosed share stakes in the public database owned by the activist shareholder in each of the three regions at two points of time in the engagement, when the stake is first disclosed and when it is at its maximum during the engagement period. At its maximum, the size of the activist block is on average 10.1% in Europe, 12.0% in Asia and 11.2% in North America. The stakes are smaller at disclosure, 5.9% in Europe, 7.2% in Asia, and 9% in North America.

The significance of the disclosure data is that it provides information on the size and value of the stake at several points in time, when the stake is first disclosed and when further purchases are made. We also know when the stake was reduced below the disclosure threshold. In the private database we can observe the actual purchases that took place prior to the disclosure date and the prices at which they were bought and sold. For example, for the UK where the disclosure threshold is 3%, we know the price and size of the purchases prior to the stake reaching 3% and the price and value of sales after the stake is reduced below the 3% level. However, we do not know from the public database when and at what price the purchases prior to the disclosure were made, or at what rate sales are made after the stake falls below the disclosure threshold.⁹ As a result, any holding period returns over the engagement period for the public database are not accurate. Using our private database we shall be able to estimate the size of the error from using the public disclosure dates.

To gauge the comparability of results with other published work, we compare the results of our data for the period, 2000-2007, which overlaps with the databases employed in Greenwood and Schor (2008) and Brav et. al. (2008).¹⁰

We show in Table 4 that the number of engagements in the private fund database totals 131. Three of the funds, with 97 cases, had a private engagement strategy and 2 funds with 34 cases had a public engagement strategy. 57 cases are entirely private and confidential and unique to the sample; they have not been reported to the

⁹ In the study of the Hermes UK Focus Fund Becht et. al (2009) were able to observe all share purchases and sales of the fund. This is not the case here; we only had access to client reports and not to the full trading book of the funds.

¹⁰ We are grateful to Robin Greenwood and Alon Brav for giving us unrestricted access to their databases and for making our research comparable to their work.

regulator, nor have they been commented on in the press. The database stops with the onset of the financial crisis.

Table 5 reports the number of outcomes in the public database. Panel A reports the total number of outcomes per year. The impact of the financial crisis is clearly visible, with the total number of outcomes dropping by 27% between 2007 and 2008 and a further 34% between 2008 and 2009. The fall also persists relative to the reduced level of outstanding engagements. The decline is spread unevenly across types of outcomes: the number of board outcomes continues to be high while the number of takeovers, associated with activists, drops by 57% between 2007 and 2008 and a further 40% in the subsequent year. Panel B reports the number of outcomes, after eliminating duplicates arising from multiple funds engaging with the the same target. In 2007 there were 81 unique merger events compared with 98 reported in Panel A, a difference of 17%. The pattern of decline in merger activity over 2007-2009 is 75% in panel A and in panel B it is 72%.

The level of activism activity appears significant as a mechanism for changing corporate governance. Table 6 shows the ratio of activist targets to total takeovers of listed firms, over the period 2000-2010, is about 10% in both the US and UK, about 5% in Continental Europe and 4% in Japan. However, the number of activist cases in all regions is far greater than the number of unsolicited or what might be described as hostile bids. These numbers do not include private activism cases.

IV. The Influence of Jurisdiction on Activism

Legal rules across countries

In this section, we describe the differences in legal rules across countries which affect the ease with which shareholders can intervene in the governance of a company. We also provide case studies for five of those countries including the US, UK, France, Sweden and Japan. A detailed description of those case studies are given in Appendix 1. The case studies are intended to show how the legal rules and their interpretation affect the likelihood of activism and the process of engagement. They will also help to explain some of the empirical results.

Since many activist engagements are greeted with hostility by the target management,

it is important to know the legal rules that may promote or obstruct the actions of the two parties. In relation to the jurisdiction of the target company, we know that some jurisdictions are friendlier to activists than others and this is likely to affect the probability of success and therefore the overall level of activist activity.

The response by the target to the initial approach of the activist may range from full agreement and implementation of the activist's demands by management, to initial hostility followed by capitulation, a simple refusal to countenance any shifts in the financial and operating strategy of the firm or an outright refusal to negotiate with the activist. The investor then has to make a decision whether to escalate the engagement through a number of channels including further negotiations with management, a public campaign in the media, co-ordination with other shareholders (possibly using a "wolf pack" of activist funds), calling an EGM or undertaking a proxy contest for board representation. If an activist is faced with a rejection of its proposals, both the law and institutions of a jurisdiction impact the ability of the investor to force a successful outcome on the target firm, and drive the ultimate profitability of the engagement. For example, in the UK, 10% of investors (reduced to 5% in 2009) are able to call an EGM to remove the board of directors (see Becht *et al*, 2009 and Black and Coffee, 1994).

In Tables 7 and 8 we provide a comparison of the legal rights of shareholders and the board of directors across seven jurisdictions. They include the US, represented by the State of Delaware which has a large proportion of US listed companies incorporated there, the UK, Germany, France, Italy, Japan and Sweden. These countries account for about 90% of our sample of engagements.

Table 7 describes the legal rights of shareholders to call an extraordinary general meeting (EGM), the ease of proxy solicitation, and the ease with which shareholders may submit proposals to be voted on by the shareholder assembly. For example, in the UK and Japan only 5% and 3%, respectively, of shareholders are required to call an EGM, whereas in the US only directors can call an EGM unless that right is given explicitly to shareholders in the company's articles of association. In most jurisdictions shareholders have a right to access the shareholder register facilitating a proxy contest; the exception is Germany where shareholders can only access their own information. In relation to shareholder proposals, they are binding in most countries with the

exception of the US where they are advisory only.

Table 8 describes shareholder rights to propose and remove directors, their tenure, and restrictions on voting power. These rights vary significantly across legal jurisdictions. Board appointment and removal rights are different across countries. In Italy, minorities can appoint their own director via proportional (plurality) voting. In Sweden, a firm's four largest shareholders can form a nominations committee for board members and any shareholder can nominate board candidates prior to the AGM. In the US, up until 2010, the incumbent board nominated all directors (with the exception of hostile proxy contests) and shareholders could only vote for the board's candidates or withhold their vote.¹¹ In most European countries, including the UK and France, a simple majority of shareholders voting can dismiss directors without cause. In the US, directors can only be dismissed with cause. In Germany, directors can only be dismissed with cause and such a proposal requires a 75% majority of those voting.

Also, in the table we describe restrictions on activist voting power, including structural impediments that prevent them from removing and appointing board directors, for example the use of control enhancing mechanisms (CEMs) by blockholders, poison pills and voting caps that can limit the effectiveness of minority voting block formations.

Legal provision have been coded to produce indices, for example, the "Anti-Directors Rights Index" of La Porta, Lopez-de-Silanes, Shleifer, and Vishny (1998) and its revision by Spamann (2010).¹² Armour, Deakin, Lele and Siems, (2009) (henceforth ADLS) have coded statutory provisions, corporate governance codes, and court decisions into a broad index of shareholder rights for 25 countries. Martynova and Renneboog (2010) provide a time-series, from 1990 to 2005, of minority shareholder rights for the US and all European jurisdictions, based upon each country's laws and regulations. The OECD (2012) also provides a useful overview of board nomination and election rules.

V. Methodology and Hypotheses

¹¹ The Dodd- Frank Act allowed shareholders to nominate directors but the courts have struck down the rules drafted by the SEC.

¹² Spamann corrected 33 of the 46 original index values and the correlation between the two sets is only 0.53.

We investigate four issues. First, what are the abnormal returns twenty days before and twenty days after the disclosure of the activist stakes? Second, what are the abnormal returns around the disclosure of outcomes, partitioned by different kinds of outcomes, for example, “putting companies into play” (takeovers), other forms of restructuring, changes in the target company’s board, and changes in payout? Third, what are the buy and hold abnormal returns from 21 days after disclosure to exit (post-disclosure buy and hold returns) and what proportion of post-disclosure returns are attributable to observable outcomes? Finally, we repeat the previous analysis comparing private versus public engagements in our fund database.

1. Disclosure returns

To measure the disclosure returns from a public engagement we compute buy-and-hold returns starting twenty days before the public disclosure on the basis that the stake will have been acquired over a period prior to the disclosure date and it is likely that there will be “run-up” effects (Schwert, 1996). To capture the full disclosure effect we also trace returns for twenty days after disclosure. We report three sets of buy and hold returns: the raw compounded returns over the period, market adjusted returns (using a Datastream country all share index), and abnormal returns based upon a market model. For the United States we also report abnormal returns using a three factor Fama French model with momentum.¹³

An important characteristic of the data is that there is more than one activist fund which has taken a share stake in the same target. In our data set of 1796 engagements, there are 1289 targets that were engaged by a single activist, 368 cases with two activists, 111 cases with three and 28 cases with four activists engaging simultaneously.

2. Post-disclosure returns

To measure post disclosure returns from a public engagement we compute abnormal buy and hold returns from the end of the disclosure return window (21 days post-disclosure) to the reported exit date by the fund. Exit is defined as the date when the stake fell below the minimum regulatory threshold, giving rise to a disclosure obligation, or when the stake was sold to an acquirer, in which case the whole stake is

¹³ The buy-and-hold returns are computed using the Eventus package for SAS.

typically divested. Like before, we compute raw compounded, market adjusted and market model returns as well as a Fama French model for the U.S. Buy and hold returns are calculated assuming we invest a dollar in each activist engagement. This approach equally weights an activist investment irrespective of the size of the stake and the dollar return earned by the activist.

In the case of multiple activists engaging with the same target the buy and hold windows may vary across the different activist funds. Where there is more than one, we do not exclude any of these cases in calculating disclosure and post disclosure to exit returns, since we are measuring the aggregate returns to activism. However, when we come to reporting the incidence and returns to different types of outcomes this approach will count a given outcome n times for n different activist stakes in the same target. To avoid double counting of outcomes we count outcomes for a given engagement only once.

3. The importance of outcomes for post-disclosure returns

We estimate the contribution of successful engagement outcomes to post-disclosure returns by computing abnormal returns around observable activist outcomes. For each of these events we construct a 41-day window around the disclosure date. In the case of multiple outcomes for a single engagement we sum-up the returns over all the outcome windows.

We might expect that where there are no observable outcomes from the engagement any gains from the disclosure of the share stake would be reversed. In that event, we would expect buy and hold abnormal returns from unsuccessful outcomes post disclosure to be negative and those with successful outcomes to be positive. We would expect that any simple trading rule of buying into the company after the activist stake has been disclosed not to produce significant excess returns. To test this we compute buy and hold abnormal returns beginning twenty days after disclosure of the activist's stake until exit, partitioned by observable activist outcomes.

For public engagements in the fund or proprietary database we also observe the initial purchase and sale dates of the stakes. This allows us to compute the entire holding period returns over the entire holding period including that pre and post- disclosure. We thereby obtain an estimate of potential "toehold returns" that accrue to the activist

funds on their purchases prior to the disclosure of the activist stake. This is interesting because it informs us as to the size of the profits from the private information of the activist.

In measuring abnormal returns over the engagement period, we explain the individual events that may take place during the engagement. Figure 1 describes the time line of a stylized activist engagement. Figure 1A depicts the time line of an observable event from the disclosure date of purchase (e.g. a press report or regulatory filing) to a subsequent report of a stake either being sold or falling below the regulatory threshold. The activist engagement is assumed to have started when the initial disclosure is made, which is not always the case since the stake will have been accumulated prior to the disclosure date and the activist may have already held discussions with the target. We compute abnormal returns around 'date 2' and buy and hold returns between 'dates 2 and 6'.

Figure 1B describes engagement outcomes that are publicly disclosed; the number of such outcomes can range from 0 to more than 1. We compute abnormal returns around 'date 4' and for multiple outcomes we calculate abnormal returns for each case.

Figure 1C provides the time line for a fully observed engagement; this includes all information in Figures 1A and 1B. Figure 1C includes all block purchases and sales made on their exact dates and all engagement outcomes. This enables the calculation of pre and post disclosure returns so as to obtain a holding period return for 'dates 1 to 2', and '2 to 7'. Any holding period return based upon public disclosure of stakes can only approximate the pre-disclosure holding period return. A private engagement does not, by definition, include any public disclosure dates (see Figure 2) and therefore we only compute the event returns for the disclosed outcomes and buy and hold returns for 'dates 1 to 7'.

Comparable U.S. studies (like Brav et. al. (2008)) have relied on public information. Their main data sources are regulatory 13D filings that are triggered by the funds crossing a 5% voting interest threshold. These filings contain information on the “purpose of the transaction” that is, the intentions of the fund. Any explicitly hostile actions or intentions must be disclosed. It is possible, of course, that funds will change

their attitude from passive/cooperative to hostile during the holding period, which should lead to a further filing disclosing the new strategy.¹⁴ The U.S. public information databases constructed from 13D filings are biased towards more confrontational engagements in which the funds hold a larger stake. The authors calculate abnormal returns 30 days before the 13D filing and for various periods post regulatory filing in the hope of capturing outcome returns.

We also break down the outcomes by category: board changes, restructuring through spin-offs or other divestitures, payout and takeovers (Figure 1.b). We provide a time series of abnormal returns and the outcomes in each year. We show the effect of the financial crisis on the level of activism, related outcomes and the abnormal returns of the targets of the engagements. We expect activists to perform poorly during times of crisis because engagements are liable to be less successful and the merger activity is much reduced.

4. Private versus public activism

In the case of private engagements there are no public disclosure dates. Outcomes might come as more of a surprise to the market and we would expect higher outcome returns than in public engagements. It is unclear whether buy and hold returns over the engagement period should be larger or smaller than in fully observed public engagements. In one respect we might expect that measured returns would be higher for private engagements because they include all the abnormal returns from toehold purchases, whereas returns for public engagements do not.

VI. Public Databases Results

In this section we describe our results for the public database. We report abnormal returns for a window around the block disclosure date, and for a window around outcomes of engagements. The outcomes are categorised by changes in payout, board changes, mergers and other restructuring events, including takeovers. We also report abnormal returns for the holding period extending from post disclosure to an estimated exit date for different benchmark models. Finally, we discuss the impact of the crisis

¹⁴ The engagement period is measured by the number of days between the first 13D filing and a final 13D filing when the block falls below the 5% threshold. Brav et. al. (2008) also use 13F filings by the relevant funds, when available, to broaden their database. However, 13F filings do not contain any information about objectives or actions.

post Lehman's on activist returns.

Returns from block disclosures

The section reports the performance of activist transactions at the disclosure date across all jurisdictions. Table 9 reports the abnormal returns around the disclosure date for 1611 engagements from 2000 to 2010. Panel A shows the abnormal returns for three windows of different lengths, 3 days, 21 days and 41 days, using a market index adjusted model ($\beta=1$, $\alpha=0$) and a market model, referred to as MAR and MM models, respectively. The particular country all share index is used as the market benchmark. For the US we also report Fama French 3 factor model with momentum.

For the window twenty days either side of the disclosure date the mean abnormal returns are 7.5% for the aggregate sample, which is statistically significantly different from zero at the 1% level. Because of the narrow window, differences across the different models are small.

Panel B shows the average abnormal returns by region for the MAR model only. There is little variation across the three regions. Asia provides the highest disclosure returns for the 41 day window at 8.7%, followed by North America at 7.4% and Europe at 7.0%. The North American CARs of 7.4% are a little below those of Brav *et al's* mean disclosure CAR of 8.4% for the same window, but Brav's results are based upon a shorter sample period from 2001 to 2006, and do not include the period of the crisis when returns to activism were seriously negative.¹⁵

Panel C reports the disclosure abnormal returns for each of seven countries which have the greatest number of activist cases. For the four countries with the most observations, the returns for the 41 day window are similar, ranging from 6.6% for Japan to 7.8% for Germany. For countries with lower levels of activism the returns are smaller, at 4.4% for France and 5.2% for Italy.¹⁶ One exception is Sweden, which has the smallest number of activist cases, but mean disclosure return of at 10.1%. Erede (2009) and Bigelli and Mengoli (2010) suggest that returns to activist investors may be lower in countries with blockholder dominated capital markets, such as Italy, because they are more likely to extract private benefits at the expense of other

¹⁵ The block disclosure returns are much lower for the calendar period after 2006. For example, in the US block disclosure returns are 2.1% for 2007 and 6.9% for 2008, both of which are below the 8.4% reported by Brav *et al*.

¹⁶ This is in line with the findings of Croci and Petrella for Italy (2011).

minority shareholders. Our results are mixed in this respect.

Panel D reports the US disclosure abnormal returns using a Fama French 3 factor model with momentum. The mean abnormal returns are 5.7% versus 7.4% for the MM model.

These disclosure returns should anticipate the probability and profitability of outcomes from the engagement. We would expect engagements with realized outcomes to be associated with additional post-disclosure abnormal returns, and those engagements without outcomes to be associated with losses, with an average of zero across all engagements. Outcome returns represent the ex post realisation of the market's expectation at the time of the announcement of the stake.

Disclosure returns around outcomes

This section analyses the cumulative abnormal returns around the disclosure of observable outcomes of engagements. We include an outcome only if it is included in the stated objectives of the activist as described in the regulatory filing or news flow. Outcomes are categorized as board changes (replacement of the CEO, CFO, Chairman or Non-Executive Directors), changes to payout policy (share buybacks or increased/special dividends) and corporate restructuring. We categorise restructurings as takeovers (the target firm is acquired by a strategic buyer or private equity fund), and 'other restructurings', which includes divestitures and spin-offs of non-core assets, and the blocking of diversifying acquisitions.

Table 10 reports the abnormal returns for all outcomes, for the same length of windows as reported for block disclosures.¹⁷ The total number of outcomes for all 1795 engagements is 1372 (0.76 outcomes per engagement). Some engagements have more than one outcome, while a significant number of other engagements have no observable outcomes.¹⁸ The average abnormal return for all announced outcomes for the 41 day window is 7.0%, and is statistically significant at the 1% level.

The largest abnormal returns are generated by takeover transactions, averaging 17.1% for the forty one day window [-20,20]. Other types of restructuring, including

¹⁷ We also aggregate outcomes over engagements. These results are reported in Table 7.

¹⁸ There are 957 engagements with no observable outcome, 556 with one outcome, 168 with two outcomes, 51 with three, 29 with four, 24 with five, 5 with six, 2 with seven 7 and one with nine outcomes. The largest number of outcomes for one engagement is twelve, but only observe this in two cases.

divestitures and spin-offs, average 6.1%. The combined return of all types of restructuring, including takeovers, is 12.1%. Payout is lower at 2.6%, driven down by the performance of US engagements. Board changes generate slightly higher abnormal returns at 3.7%. All estimates are statistically significant. These results show that successful engagements have much higher levels of returns than those shown at the disclosure date.

Buy and hold abnormal returns and outcomes

Tables 9 and 10 report block disclosure and outcome disclosure returns. However, since not all engagements have outcomes we cannot simply add disclosure abnormal returns to outcome abnormal returns. To overcome this problem, we calculate BHAR over the engagement period. We will then be able to compare the profitability of engagements which have successful observable outcomes with those that do not. In addition, we will be able to determine if, in aggregate, post block disclosure returns are non zero.

In Table 11 we report total buy and hold returns (BHAR) from the disclosure of an activist stake to its [publicly disclosed] exit. Multi asset pricing models are applied to three different horizon buy-and-hold windows: 20 days prior to disclosure of the share stake to exit, where exit is defined as the date when the company's stake falls below the regulated threshold or the date of the news report that the activist has exited the share position. The second period is the day of the disclosure to exit and the third is 20 days post disclosure to exit. The MAR and MM models are used to calculate the difference between the target's buy-and-hold return and the return on the value weighted country all-share index. Results for the Fama French model are reported for the US dataset only.

Panel A reports the mean (median) returns for the entire sample for the three different periods. For the period -20 days prior to block disclosure to exit for the engagement, the mean (median) BHAR are 33.6% (15.4%) for the MM model and 35.9% (18.9%) for the MAR model. These returns are far above the disclosure returns reported in Table 8. This confirms that the outcome returns reported in Table 9 reflect a large increase in the abnormal returns over the entire engagement.

This is confirmed by the BHAR for the period +20 days after block disclosure to exit

since this captures only post block disclosure performance. The mean abnormal returns are 27.2% and 28.2% for the MM and MAR models, respectively. The medians are substantially lower at 10.0% and 12.4%, but all are statistically significant. The average holding period is 826 days, with a median holding period of 696 days, so the annualised returns are significantly lower.

Panel B shows that the results for the different regions vary considerably. For the same period, for +20 days to exit in Asia the MM model CARs are -28.9%, while the MAR returns are 13.3%. The difference reflects the beta of the targets of activism and their alphas. For North America we estimate abnormal returns of 34.1% for the MAR model and 37.4% for the MM model and 24.3% for the Fama French model (Panel C). For Europe the results for MAR are 17.3% and for MM are 24.9%; all results are significant at the 1% level, with the exception of Asia. The higher returns for Europe and North America reflect the greater frequency of outcomes, as we discuss in more detail below.

We now investigate in Table 12 how outcomes contribute to BHAR. Panel A shows buy and hold returns for engagements across all regions with and without outcomes. For those engagements with outcomes the mean (median) BHAR are 34.2% (19.4%), whereas for those with no known outcomes they are much lower at 22.7% (7.6%). This difference illustrates that engagements without defined successful outcomes produce significantly smaller abnormal return for investors. However, it is still a puzzle why engagements without observable outcomes produce positive post disclosure BHAR. It may be that there are outcomes that occur but which are not included in the stated objectives of the activist or the outcomes occur after the exit of the activist fund, that is after the engagement has ended.

Columns 6 to 10 look at different types of outcomes and their contribution to the post-disclosure returns. Among the 793 cases with outcomes, 247 had at least one takeover, 143 at least some other type of restructuring, 158 a payout related event and 290 at least one board change. The disclosure abnormal returns for takeovers are the largest (15.3% mean, 5.8% median), followed by other types of restructuring (9.1% mean and 3.9% median).

Panels B, C and D report the same results by region. For Europe Panel B shows that

engagements with outcomes have much higher buy and hold returns than engagements without observable outcomes. There are 166 engagements with outcomes yielding a post-disclosure BHAR of 28.3% (23.7%). The 165 engagements without outcomes have a BHAR which is far lower at 6.6% (5.2%). The main contribution comes from takeovers which constitute the highest incidence of outcomes (60) and which have the highest level of abnormal returns at 18.9%.

Panel C for Asia shows that the large majority of engagements have no outcomes, 158 compared with 32 engagements with outcomes. In the 32 engagements with outcomes the BHARs are 33.7% (25.0%) compared with only 9.9% (8.8%) for the sample with no known outcomes. The difference in outcomes is also reflected in the mean block disclosure returns which are substantially higher at 22.6% (13.3%) with subsequent reported outcomes, and only 4.5% (0.3%) without reported outcomes. The market therefore seems to anticipate correctly the probability of success.

In Panel D for North America post-disclosure returns are high, even when there are no disclosed outcomes. The mean (median) post disclosure BHARs for all engagements with outcomes are 36.8% (17.2%), compared with 31.6% (7.6%) for no known outcomes.¹⁹ Almost one quarter of outcomes are takeovers which also have the highest abnormal returns.

The high BHARs for the no outcome sample is consistent with research on the impact of proxy contests (see DeAngelo and DeAngelo (1989), Bebchuk (2007) and Listokin (2008)) who find that failed contests generate outperformance in the target firm.

The Impact of the Financial Crisis on Shareholder Activism

Table 13 describes the annual mean (median) abnormal return for the period 2000-2010 for each of the three Continents using the MM and MAR models. Raw returns are also reported. The table shows that the impact of the financial crisis, which began in July 2007, on activist returns.

In Table 2 we reported a large fall in the number of new activist cases after the onset

¹⁹ The large difference between means and median is caused by a few very large returns on engagements of distressed companies that were turned around by the activist. Even winsorising did not exclude all these cases.

of the financial crisis; new engagements fell by 50% from the the end of 2007 to 2009. Table 13 Panel A for Europe reports that the mean abnormal returns for ongoing engagements are -14.9% for the two years 2007-2008 using the MAR model, although most of this poor performance is in 2008; the medians are -2.9%. If we use the MM model both means and medians are strongly negative at -30.4 and -12.7%, respectively.

The impact of the crisis on returns is similar for North America where we find the combined two year MAR mean (median) abnormal returns 2007/2008, are -11.3% and 3.3%, respectively. Using an MM model the mean (median) combined two year abnormal returns are -6.1 and 2.8%, respectively.

The abnormal returns for Asia have quite a different pattern from Europe and North America. Mean (median) abnormal returns, using a MAR model, are heavily positive at 12.3% and 23.5%, respectively. Returns for the MM model are -10.5% and 1%, respectively. The raw mean returns during this period were heavily negative for all three Continents. Median returns were also heavily negative.

In summary, activists under-performed the market in the financial crisis. One reason is clear from Table 5 which shows a large drop in the number of takeovers and therefore in the outcomes of engagements. We also expect that prices of stocks that have impounded a high probability of takeover will have fallen more in the crisis period than other stocks. It may also be that activists funds, faced with increasing redemptions, had difficulties unwinding large positions in targets and had to engage in sales at fire sale prices.

Fund Database Analysis

Table 14 shows abnormal returns for the 74 public engagements in the fund database on disclosure. This allows us to make a comparison of this sample with the population of public engagements. The abnormal disclosure returns over a 41 day window for the sample of 74 public engagements is 7.6%, compared with 7.0% for all public disclosure announcements in Europe. Panel B shows that a large proportion of these returns depends upon the type of fund. For public strategy funds, which have at least 80% of their engagements in the public domain, the abnormal returns are 15.9%. This compares with only 2.2% for private strategy funds, which conduct at least 40% of their engagements in private. For the latter these small returns are not significantly

different from zero.²⁰ Panel C shows a disclosure return of 9.3% for the 12 cases where the target was subsequently taken over.

Disclosure Returns around outcomes for the Fund Database

Table 15 analyses abnormal returns around engagement outcomes in the fund database and for private and public engagements. As in Table 10, the engagement outcomes include changes to the board, to payout policy and restructuring, including takeovers. The 131 engagements in the fund database are associated with 319 observable outcomes with clearly defined dates. The average cumulative abnormal return in a 41 day window around the outcome disclosure is 5% and significant. For the 57 private engagements there are 124 outcomes giving an abnormal return of 8.3% in the same window; for the 74 public engagements there are 195 outcomes giving a lower return of 2.9% although still statistically significant at the 1% level. The difference is largely due to higher outcome returns for CEO and chairman turnover and restructuring in the private cases. The higher returns for outcomes in private cases is consistent, because there is no disclosure in private cases arising from stake announcements the true nature of the engagement is not revealed to the market until the outcome is made public.

Panel B reports these differences for three categories of outcomes for board changes: (1) replacement of the CEO, (2) replacement of the chairman and (3) other board related events. The returns for private engagements are significantly higher than for public engagements: for the 41 day window, 7.5% versus 2.2% for CEO replacement; 15% versus 1.4% for chairman replacement. In both cases the returns to outcomes for private engagements are significant, whereas for public engagements they are not.

In contrast there are no big differences in payout outcomes (Panel C). Here the abnormal returns are only slightly higher for private outcomes than public ones at 4.7% versus 4.4% for the 41 day window.

The pattern of results for restructuring outcomes are similar (Panel D). The abnormal returns for restructuring such as spin-offs and divestitures, but excluding takeovers, is 7% for private engagements, but only 2.5% for public ones. The latter is not significant. Although the returns for takeover announcements are higher in those cases

²⁰ This result is consistent with the Hermes Focus Fund study of Becht et. al. (2009). There were only three public engagements that produced significant disclosure returns and all three cases were associated with newspaper “headlines”.

where there was a private engagement the sample is too small to make any inferences. There are 8 takeovers resulting from public, but only two from private engagements.

Decomposition of Buy and Hold Abnormal Returns

Table 16 describes returns for the European Fund database. Unlike public engagements, there are no identifiable block disclosure dates for private engagements. For all private and public engagements of the fund database the BHAR is 8.3%. For those private engagements with observable outcomes the BHAR are 15.8% and for those without they are negative at -8.0%. The abnormal returns for the window around the announcement of outcomes is 19.5%, which is significant at the 1% level. This reinforces earlier results that activism only shows a significant profit when there are outcomes related to the engagement. These results include both private and public engagements in the fund database.

When the results are partitioned into private and public cases (Panel B), private activism has a higher BHAR of 10% compared with 6.9% for public cases. Again, this suggests that engaging privately may have advantages over public engagements because the target is more willing to implement changes in strategy.

When the cases are divided into engagements with and without observable outcomes, the BHARs for engagements with outcomes are very large at 12.9% for public cases and 20.7% for private cases. However the percentage of cases where there are outcomes is much greater in the case of public cases, 77%, than in private cases, 58%. It might therefore be expected that public engagements should lead to greater BHAR than private cases, where in fact the reverse is the case. The explanation is that in the cases where there are no outcomes the BHAR are more strongly negative in the public than in the private cases. In conclusion, the findings differentiate activism from “stock picking” (passive exposure to value stocks). The returns to outcomes are indicative of unique activist manager skills.²¹

VII. Conclusions

The buy and hold returns to 1795 public engagements by activist hedge funds across

²¹ Or it may be simply an endogenous outcome where the target agrees with the activist strategy, and may even have been contemplating it, and as a result makes a successful outcome more likely.

22 countries between 2000 and 2010 are positive and significant. Markets react positively to the announcement of an activist block and also to the announcement of a corporate event that can be linked to activism. Combined the mean returns exceed 15%.

The post-disclosure returns to activist engagements are also positive, but activists appear to be more than good stock pickers. Engagements that produces observable outcomes has much higher total abnormal returns than those without. The outcomes contributing the highest returns across all regions are takeovers.

Comparing regions, Asia looks the least promising for activism because of low levels of outcomes. In Japan the average investor is still not willing to collaborate with the activists although there are relatively few legal obstacles. In general, jurisdiction appears to matter in relation to the level of activism, and related outcomes and as a result affects the overall level of profitability. However, it is yet unclear if this is due to a common pattern in the composition of the target's ownership that varies by across countries, for example for historical or fiscal reasons, or due to jurisdictional or cultural differences.

During the first phase of the 2007-2008 financial crisis activist funds did relatively poorly when compared to benchmark indices and other types of equity investment. This result is probably due to the collapse of the takeover market and liquidity.

There are substantial caveats to our findings. The returns we measure may not be sufficiently adjusted for risk taking. The positive returns to hedge fund activism might reflect risks we do not account for. Activists put considerable short term pressure on boards, even on those that are not directly targeted. This pressure might lead to short term gains in stock prices, but might have negative long run consequences for their overall economic performance, as has been recently argued by policy makers and non-financial stakeholders. However, these effects are hard to measure.

References

- Anabtawi, I. and L. Stout (2008). "Fiduciary Duties for Activist Shareholders." *Stanford Law Review* 60: 1255-1308.
- Armour, J., S. Deakin, F. Lele, P. Priya and M. Siems (2009) "How Do Legal Rules Evolve? Evidence from a Cross-Country Comparison of Shareholder, Creditor and Worker Protection". ECGI Law Working Paper No. 129.
- Armour, J. and D. A. Skeel (2007). "Who Writes the Rules for Hostile Takeovers, and Why?—The Peculiar Divergence of U.S. and U.K. Takeover Regulation." *Georgetown Law Journal* 95: 1727-1794.
- Bainbridge, S. (2005). "Shareholder Activism and Institutional Investors". *Law and Economics Research Paper No. 05-20, UCLA School of Law*. Los Angeles, CA.
- Becht, M., J. Franks, et al. (2009). "Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes UK Focus Fund." *Review of Financial Studies* 22 (8): 3093-3129
- Billett, M., Tao-Hsien Dolly King, and David Mauer (2004). "Bondholders wealth effects in mergers and acquisitions: New evidence from the 1980s and 1990s." *Journal of Finance* 59: 107-135.
- Black, B. S. and J. C. Coffee (1994). "Hail Britannia?: Institutional Investor Behavior under Limited Regulation." *Michigan Law Review* 92(7): 1997-2087.
- Bratton, W. W. (2007). "Hedge Funds and Governance Targets." *Georgetown Law Journal* 95 (5): 1375-1433.
- Brav, A., W. Jiang, F. Partnoy, and R. Thomas (2008). "Hedge Fund Activism, Corporate Governance, and Firm Performance." *Journal of Finance* Volume 63(4): 1729-1775.
- Carleton, W. T., J. M. Nelson, and M. S. Weisbach (1998). "The influence of institutions on corporate governance through private negotiations: Evidence from TIAA-CREF." *Journal of Finance* 53(4): 1335-1362.
- Choi, Woon-Youl, Sung Hoon Cho (2003), Shareholder activism in Korea: An analysis of PSPD's activities, *Pacific-Basin Finance Journal*, Volume 11, Issue 3, Corporate Governance, Pages 349-363
- Croci, E. (2007). "Corporate Raiders, Performance, and Governance in Europe." *European Financial Management* 13(5): 949 - 978.
- Cziraki, P., Renneboog, L. and P. Szilagyi (2010). "Shareholder Activism Through Proposals: the European Perspective", *European Financial Management*, forthcoming.
- Davis, G. and H. Kim (2007). "Business ties and proxy voting by mutual funds." *Journal of Financial Economics* 85(2): 552-570.
- Davis, G. and M. Useem (2002). "Top management, company directors, and corporate control." *Handbook of Strategy and Management*. A. Pettigrew, H.

- Thomas and R. Whittington (eds) Sage, London: 232-258.
- Dhillon, U. S., and Herb Johnson (1994). "The effect of dividend changes on stock and bond prices." *Journal of Finance* 49(1): 281-289.
- Einhorn, D. (2008). Fooling Some of the People all of the Time: A Long Short Story. John Wiley & Sons, New Jersey.
- Faludi, D. (2006). "Love and Honour Each Other. As Long as a Takeover Bid Shall Divide You." Auerbach Grayson Western European Small Cap Research, 21 December.
- Gantchev, N. (2009). "The Costs of Shareholder Activism: Evidence from a Sequential Decision Model." PhD Thesis Chapter, The Wharton School, University of Pennsylvania.
- German News Digest (2005). U.S. Blackstone Agrees With Two Minority Shareholders in German Celanese, 22 August.
- Gillan, S. and L. Starks (2007). "The Evolution of Shareholder Activism in the United States." *Journal of Applied Corporate Finance* 19(1): 55 - 73.
- Grant, J. and T. Kirchmaier (2008). "Shining a Light on Europe's Secret Takeover Battles." The Wall Street Journal Dow Jones, New York, 21 August.
- Greenwood, R. and M. Schor (2009). "Investor Activism and Takeovers". *Journal of Financial Economics* 92(3): 362 - 375.
- Hamao, Yasushi, Kutsuna, Kenji and Matos, Pedro P., Investor Activism in Japan: The First 10 Years (March 16, 2010). Available at SSRN: <http://ssrn.com/abstract=1573422>
- Holderness, C. G., and D. P. Sheehan (1985). "Raiders or saviors? The evidence on Six Controversial Investors". *Journal of Financial Economics* 14(4): 555-579.
- Hu, H. and B. Black (2007). "Hedge Funds, Insiders, and the Decoupling of Economic and Voting Ownership: Empty Voting and Hidden (Morphable) Ownership." *Journal of Corporate Finance* 13(2): 343-367.
- Kahan, M. and E. B. Rock (2006). "Hedge Funds in Corporate Governance and Corporate Control." Institution for Law & Economics Research Paper No. 06-16. University of Pennsylvania.
- Karpoff, J. (2001). "The impact of shareholder activism on target companies: A survey of empirical findings." University of Washington Working Paper.
- Klein, A. and E. Zur (2008). "Entrepreneurial Shareholder Activism: Hedge Funds and Other Private Investors." *Journal of Finance* 64(1): 187-229.
- Klein, A. and E. Zur (2009). "The Impact of Hedge Fund Activism on the Target Firm's Existing Bondholders." Unpublished Working Paper.
- Kruse, Timothy A. and Suzuki, Kazunori (Icko), Has the Threat of a Takeover Improved the Management of Target Firms? An Analysis of Firms in Which M&A Consulting, Japan's First Hostile Bidder, Acquired Stakes (October 30, 2009). Corporate Ownership and Control, Vol. 7, No. 2. Available at SSRN: <http://ssrn.com/abstract=1506190>
- Maxwell, W. F., and Ramesh P. Rao (2003). "Do spin-offs expropriate wealth from bondholders?." *Journal of Finance* 58(5): 2087-2108.

OECD (2012), Peer Review 4: Board Nomination and Election, Paris, DAF/CA/CG(2012)1/FINAL

Osaki, S. (2008) "The Murakami Fund Incident and Future Fund Regulation." *Nomura Capital Market Review* 9 (3): 2 – 15.

Prevost, A. and R. Rao (2000). "Of What Value are Shareholder Proposals Sponsored by Public Pension Funds." *Journal of Business* 73(2): 177 - 204.

Renneboog, L. and P. Szilagyi (2010). "The Role of Shareholder Proposals in Corporate Governance, Journal of Corporate Finance", *forthcoming*.

Santella, P., E. Baffi, *et al.* (2008). "A Comparative Analysis of the Legal Obstacles to Institutional Investor Activism in Europe and in the US." Unpublished Bank of Italy Working Paper.

Schwert, G. William, Markup pricing in mergers and acquisitions, *Journal of Financial Economics*, Volume 41, Issue 2, June 1996, Pages 153-192, ISSN 0304-405X, 10.1016/0304-405X(95)00865-C.

Spamann, H. (2010). The "antidirector rights index" revisited. *Review of Financial Studies*, 23(2), 467-486.

Strine, L. (2006). "Toward a True Corporate Republic: A Traditionalist Response to Bebchuk's Solution for Improving Corporate America." *Harvard Law Review* 119: 1759 - 1783.

Wahal, S. (1996). "Pension Fund Activism and Firm Performance." *Journal of Financial and Quantitative Analysis* 31(1): 1 -23.

Appendix 1: Case Studies of Activist Interventions

In order to provide greater insight into how laws on shareholder rights might facilitate activist interventions we provide below a series of case studies from our data set. The case studies focus particularly on situations where the activist wishes to change the board of directors in order to implement an alternative business strategy. They illustrate the influence of voting rules, disclosure thresholds, mandatory bid rules and concert parties. These differences are accentuated by the landscape of ownership, in particular the ability of the activist to form coalitions with other shareholders in the presence or absence of a large block holder in the target company.

UK

The United Kingdom is among the most shareholder activist friendly countries in the world (Black and Coffee 2004). Shareholders in the UK have the statutory right to requisition an EGM with 10% of a listed firm's voting capital (recently the threshold was lowered to 5%) in order to remove the board of directors. In the UK, each director is voted on separately, and majority voting rules apply.

These features of the UK system are well illustrated by the case of *F&C Asset Management*: In 2010 Sherborne requisitioned an EGM to restructure the board of one of the UK's largest asset managers, F&C, so as to radically alter the strategy of the company.²² The vote resulted in the removal of F&C's chairman and another director, and the appointment of three of Sherborne's nominees. The fund's manager, Edward Bramson, was appointed as F&C's new chairman. Sherborne held 18% of F&C prior to the vote and received 70% support in favour of the appointment of Bramson as Chairman. Ten institutional investors held stakes in F&C over 3%, accounting for about 48% of the outstanding shares. The F&C case is an unusual example, because the activist was not able to negotiate a settlement under the threat of an EGM, and had to requisition an EGM in order to restructure the board. As Becht *et al* (2009) showed, the private threat of an EGM is often enough to facilitate a

²² Hanover Investors and Sherborne Investors are UK activists which specialize in "EGM activism" and together account for 8 of our cases. The funds' strategy is to privately negotiate a restructuring of the target's board in the first instance, including the appointment of their own representatives. In cases where this fails, the funds will call an EGM to replace the directors.

negotiated outcome in the UK.

Germany

Germany is similar to the UK in terms of its board election rules, but there are substantial differences that make activism more difficult in practice. Like the UK, German rules make it possible for shareholders to call an extraordinary shareholder meetings and precipitate board elections. In one respect, it is easier in Germany than in the UK to contest board elections. A shareholder needs only to hold 5% of the shares for a period of at least three months to call an EGM and alternative candidates can be proposed. However, shareholder engagements in Germany are complicated by the use of bearer shares. With bearer shares the ultimate shareholder is not necessarily known to the activist. Even when firms have issued registered shares, it may prove difficult to identify other shareholders because the shareholder register is not a public document and is not necessarily available to the activist, unlike for example in the UK and US. Thus, the activist cannot easily identify and engage with the ultimate shareholder, unless the latter wishes to disclose their stakes or is required to because they are above the statutory threshold.

Deutsche Börse (DB) in 2004-2005 expressed an intention to bid for the London Stock Exchange and had accumulated a considerable amount of cash for this purpose. DB was privately held in 2000 by a small number of German banks, and was now a listed company. By 2005, German-based investors owned less than 1% of the shares and board control had become contestable. The London based activist fund TCI expressed opposition to the bid for the LSE and demanded DB put the decision to acquire the LSE to a vote of shareholders.²³ They wished DB to drop the bid and distribute the cash to shareholders. The supervisory board of DB refused to agree to a shareholders meeting or drop the bid. TCI had by then accumulated a 5% stake and was in a position to call an extraordinary shareholder meeting to remove the directors of the supervisory board. When Fidelity and the Capital Group declared their support for TCI it was clear that the activist coalition had a majority of the votes and the ability to replace the board. The CEO resigned and the board was replaced at the next ordinary shareholder meeting. The bid was withdrawn and the cash distributed to

²³ Unlike in the UK major decisions like large acquisitions do not require the approval of the shareholders. Providing the management and supervisory boards agree no vote of shareholders is required. Exceptions are where there is a radical change in the corporation's structure such as an acquisition of a business which is very different from the buyer's own.

shareholders.

DB illustrates that UK style activism is possible under German legal rules. The success of the TCI's engagement was greatly facilitated by a foreign ownership structure sympathetic to the objectives of the activist. TCI was able to coordinate its strategy with foreign institutional investors, who had disclosed their stakes.

Sweden

The Swedish Corporate Governance Code requires that listed companies should have an external nomination committee composed of shareholders to propose candidates for the post of chairman and other board members. Representatives of the four largest shareholders in the company are usually appointed to the committee. At least one member has to be independent of the company's largest shareholder. In the international public database there are seven board related interventions in Sweden. In all cases, activists joined the nominations committee and succeeded in appointing directors sympathetic to their goals. Plurality voting is utilized, where the candidate with the largest number of votes is elected, in contrast to majority voting in the UK. Perhaps, not surprisingly, there were no proxy contests undertaken by activist investors in Sweden between 2000 and 2010.

Lindex is a leading Swedish retail clothing chain focusing on women's clothing, lingerie and children's clothing. It was identified as a target by Cevian Capital, a Stockholm-based activist fund. It viewed Lindex as an attractive restructuring candidate, as it traded at a 'depressed valuation' in 2003 due to an unsuccessful expansion in Germany. In October 2003, Cevian acquired a 10.4% block holding, subsequently increased it to 16%, making it the largest shareholder; other investors were mostly institutional investors with small stakes. Cevian was assisted by the board nominations committee. As a result, Cevian could directly influence board appointments without the need to call a shareholder meeting. Its founder Christer Gardell, was appointed as Chairman of Lindex and another manager of Cevian served as a non-executive director. The nominations committee also recruited four new board members with industry, logistics and corporate restructuring experience. A new CEO was recruited from H&M, and a new compensation scheme was instituted for the senior managers.

Lindex illustrates how the ability of activists to have a presence on the nominations

committee makes the process of board replacement less confrontational, and speedier. Also, the ownership of Lindex was widely held, and Cevian became the de facto controlling blockholder when it acquired a stake of 10.4% and joined the nominations committee. Many other listed Swedish firms have controlling shareholders with differential voting rights enabling them to dominate the committee.

Japan

In theory, shareholder rights, and the ease with which they can be used in an activist campaign are stronger in Japan than in Europe. For example, 3% of outstanding shares with voting rights held for at least 6 months are sufficient to requisition an EGM. Just 1% of outstanding shares are enough to propose a shareholder resolution at the AGM. All shareholders have access to the shareholder register upon request, unlike in Germany.

However, “poison pill” defences have been permitted since 2006, and there have been only 2 successful proxy contests in Japan. Ichigo Asset Management, a shareholder in steel maker Tokyo Kohtetsu, successfully solicited proxies in favour of rejecting an undervalued merger proposal with Osaka Steel, although this did not involve board changes. The paucity of proxy votes indicates there are significant structural barriers to shareholder engagement in Japan including cross-holdings, inter-locking directorships and most important a cultural reluctance of Japanese institutional investors to back aggressive foreign activism.

By the beginning of 2007, London based activist fund, The Children’s Investment Fund (TCI) was the largest shareholder in the Japanese Electric Power Development Co. (known as J-Power) with a 9.4% stake. Under Japan’s Foreign Exchange and Foreign Trade Control Law, non-Japanese investors had to receive the consent of the Ministry of Economy, Trade and Industry (METI) to raise an ownership stake above 10%. J Power was Japan's largest electric-power wholesaler, and had accumulated significant cash balances driven by strong domestic demand for electricity, low interest payments (low leverage) and a lack of competition. The firm had yet to disclose a strategic plan as to how it planned to spend its cash.

In January 2007, TCI submitted a request to the ministry, METI, for permission to raise its stake above 10% to 20%. On 12 March 2007, the fund wrote to J Power to request it more than triple its dividend and reported it had increased its holding from

9.4% to 9.9%. The fund also acquired a stake in another Japanese utility, Chubu Electric Power Co, which had a cross holding with J-Power, again calling for the utility to increase its dividends and institute share buy-backs. J Power's management rejected TCI's demands. In response, TCI tabled shareholder proposals for the AGM in June 2007 advocating a dividend increase. These were defeated by an 80% majority at the meeting.

In December 2007, TCI submitted a further letter to J Power again calling for a dividend increase and requesting board representation. TCI also submitted a request to METI to raise its stake from 9.9% to 20%. In a statement in response to TCI's letter, J Power stated "it needed to set aside large sums of cash for capital spending for future growth while maintaining solid credit ratings to procure funds that are necessary for such investments on competitive terms... The company believes that in circumstances where the company plans a substantial amount of capital expenditure in the upcoming years, an increase in dividends, even to the extent of liquidating resources needed for future growth, is not in its shareholders' common interest" [\[1\]](#) In a further setback to TCI's strategy, METI rejected its application to raise the stake in J Power on the grounds of "Energy security concerns". In a final attempt to press its agenda, TCI tabled proposals for the 2008 AGM again calling for an increase in the dividend and share buybacks, the appointment of at least three outside directors to the target's board and the limitation of cross shareholdings to a maximum of ¥5bn. TCI also undertook a proxy contest engaging a proxy solicitation firm to bundle the votes of other minority shareholders.

However, a majority of 60% of shareholders sided with management – on the face of it, a surprising outcome as 40% of J Power shares were held by foreign investors. TCI had failed to gain the support of domestic institutions and J Power had spent ¥50bn purchasing stakes in 39 Japanese firms including Mizuho Financial Group, in an attempt to reconstitute the cross-holdings which had protected corporate Japan until the late 1990's. Faced with intractable opposition to their proposals, TCI divested its stake in October 2008 at a loss.

J-Power demonstrates that Japanese institutional investors display a cultural aversion to supporting the campaigns of aggressive foreign activists, even when they would benefit from the engagement. The case differs from TCI's intervention at Deutsche Borse in that the Japanese target was willing to hold a general meeting knowing it had

the necessary votes of domestic institutions and cross-shareholders to defeat TCI and the foreign institutional shareholders.

US

Unlike in most European jurisdictions, shareholder proposals are advisory only and minority shareholders cannot call EGMs unless this power is expressly given in the corporate by-laws. Proposals related to changing the composition of the board and opposed by incumbent management require the activist to undertake a proxy contest including the active solicitation of votes from other minority shareholders. If the goal of the contest is control, takeover defences including poison pills and staggered boards are legal and widely available. Activists often use a “short” slate of dissident directors to gain representation on a board, as minority shareholders are reluctant to hand over control without receiving a premium.

In the case of CSX case in 2008, TCI, The Children’s Investment Fund, and 3G nominated a dissident slate of five candidates to the board of twelve, and added a proposal to amend CSX’s by-laws to allow 15% of the share capital to call an EGM. Under the plurality voting system where the candidates receiving the most votes (although not necessarily a majority of the votes attending) win, four members of the activist’s dissident slate were elected to the board including the managing partners of both TCI and 3G, and the EGM proposal was accepted. The CSX case can be contrasted with the refusal of minority shareholders to privately back Carl Icahn’s dissident slate of 14 directors at Time Warner.

The lesson from the CSX case is that the legal rules in the US allow for activist challenges but make them costly. TCI succeeded because it was willing to incur large expenses and because they were supported by other shareholders despite the fact that the shareholdings were dispersed. Only 3 institutions held stakes over 3% (accounting for 10% of shares outstanding) and most other institutional holdings were under 1%.

France

France has many of the minority shareholder protection rules of other European jurisdictions including the right of 5% of the share capital to call an EGM, 0.5% to table a binding shareholder resolution and rights of access to the shareholder register. However, structural barriers exist to effective minority activism, primarily (family)

blockholders who deploy control enhancing mechanisms (CEMs) including stock partnerships, shares with differential voting rights and voting caps on minority shareholders to enhance their control. The case of Lagardere illustrates the issues arising from a public activist engagement with a firm controlled by a family blockholder.

Wyser Pratte Management held 0.53% of the share capital of Lagardere (the sixth largest shareholder) and submitted two shareholder proposals one month ahead of the 2010 general meeting. These nominated the fund manager, Guy Wyser Pratte, to the board of directors, and called for a change to the control structure of the firm, which was incorporated as a French stock partnership which allows the General Partner, Arnaud Lagardere of the founding family, to veto decisions taken by the shareholder meeting. Under the rules of French board elections (qualified majority voting), Wyser Pratte needed 51 per cent of the quorum to be nominated to the board. The fund engaged a proxy solicitation firm to bundle the votes of other minority shareholders. Neither of the resolutions passed with Wyser Pratte officially receiving 24% of the vote on a turn-out of 65% of the shareholders. Wyser Pratte later alleged voting irregularities, and an investigation by the French regulator Autorité des Marchés Financiers (AMF) found that the votes of significant foreign shareholders had not been tallied correctly due to the custodians holding the shares in pooled nominee accounts. The AMF responded that as the intermediaries (including the custodians and Broadridge Financial Solutions) were outside of France, it would take no further action. The Lagardere case illustrates why hostile public engagements with family blockholder controlled firms are less frequent than private negotiations.

In France, activists have been more successful in engaging publicly with firms which have more dispersed ownership. Examples in which activists gained board seats include Atos Origin (Centaurus Capital), Accor (Colony Capital), Carrefour (Blue Capital), Valeo (Pardus) and Saint-Gobain (Wendel). In these cases board representation was negotiated behind-closed-doors on the basis that the activists' agreed not to criticise the firm in public and not to seek "de facto control". In most of the cases the fund managers were French nationals. Similarities can be drawn with unsolicited takeover bids in the French market. Hostile offers are rare in France, and they are seldom undertaken by a foreign acquirer.

Table 1 – International Table 1 – Public Engagements by Fund Group (2000 – 2010)

The table reports descriptive statistics and frequency distributions of public engagements by fund group and geography in the international public engagement database between 1 January 2000 and 31 December 2010. The numbers are based on the year of the initial regulatory filing or press disclosure. The total number of cases is 1795. Funds with over 16 engagements globally are listed. The location of the fund is denoted in brackets next to the fund name. Steel Partners and Carl Icahn are the most prominent international activist fund groups with a total of 96 and 56 interventions respectively. Both are US based funds focusing on the North American market, although Steel Partners has a significant number of cases in Asia. * indicates the fund closed or underwent a major restructuring due to the high level of redemptions during the financial crisis.

Fund Short Name	Asia				Europe																N. America			Total	
	H. Kong	S. Korea	Japan	Total Asia	Austria	Portugal	Ireland	Greece	Finland	Lux	Spain	Norway	Belgium	Sweden	NL	CH	France	Italy	Germany	UK	Total Europe	Canada	US		Total NA
Steel Partners (US)*		1	37	38																5	5		53	53	96
Carl Icahn (US)		1		1																	0	2	53	55	56
Ramius (US)				0																	0		53	53	53
ValueAct Capital Partners (US)				0																	2		50	50	52
Third Point (US)				0													1				1	1	38	39	40
Farrallon Capital Management (US)				0																	0		36	36	36
Murakami Fund (Jap)*			36	36																	0			0	36
Harbinger Capital (US)*			1	1																	0		30	30	31
Elliott Associates (US)		1		1													1	2	4	3	11	1	17	18	30
Wynfield Capital (US)				0																	0		30	30	30
Hermes Focus Funds (UK)*				0		1		1			2		2	2	1		4	2	14		29			0	29
Blum Capital Partners (US)				0																	0		26	26	26
Riley Investment Management (US)				0																	0		26	26	26
Laxey Partners (UK)				0				1			1		1	2	5				3	12	25			0	25
Barington Capital Group (US)				0																	0		24	24	24
Jana Partners (US)				0										2							2		22	22	24
Cycladic Capital Management (UK)*				0			1			1							1	2	2	16	23			0	23
Symphony Financial Partners (Jap)			23	23																	0			0	23
Wyser Pratte & Co (US)				0	1								1		1		6		10	1	20		2	2	22
Financial Edge Fund (US)				0																	0		22	22	22
Taiyo Pacific Partners (Jap)			22	22																	0			0	22
Pershing Square LLC (US)				0																	0	2	20	22	22
Cannell Capital (US)				0																	0		20	20	20
Discovery Group (US)				0																	0		20	20	20
SAC Capital Advisors (US)				0															1		1		18	18	20
SCFS Equities (US)				0																	0		20	20	20
Amber Capital (US)				0									2			2	15				19			0	19
Shamrock Activist Value Fund (US)*				0																	0		19	19	19
Relational Investors (US)				0																	0		18	18	18
Centaurus Capital (UK)*				0			1			1			1	6		1	4	3	1		18			0	18
The Children's Investment Fund (UK)	6	1	5	12						1					1		1		2		5		1	1	18
Stillwell Value (US)				0																	0		17	17	17
Southeastern Asset Management (US)				0																	0		16	16	16
Pirate Capital, LLC (US)*				0																	0	1	15	16	16
Other	1	21	62	84	0	0	2	1	2	4	3	4	8	11	8	13	15	16	28	114	230	14	484	498	810
Total	7	25	186	218	1	1	2	3	4	5	5	7	9	15	24	19	28	43	55	168	390	21	1166	1187	1795

Table 2 – International Public Database Sample (2000 – 2010)

Panel A in the table reports the descriptive entry and exit statistics for the full international sample of 1795 engagements between January 2000 and December 2010. The entry statistics are based on the year of the initial regulatory filing or press disclosure. Regulatory disclosure thresholds differed between jurisdictions and over time. Mandatory disclosure is applicable at the 2% threshold in UK and Italy. In contrast, it stands at 5% in the US and Japan. In the full sample there are 480 engagements that were still on-going at the end of 2010, and their exit dates were set to 31 December 2010. Another 46 engagements did not have an exact exit date, but were known to have finished by the end of 2010. Panel B reports the number of engagements by region and exit year.

Panel A : Number of Engagements by Disclosure Cohort and Exit Year																	
Disclosure Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Exit Date Known	Censored 31/12/2010	Exit Date Unknown	Total	Average Length of Holding (Days)	Average Length excl. Censored (Days)
2000	8	14	5	8	2	1	2	2	1			43	3	2	48	1008	810
2001		7	21	6	7	5	3	3				52	11	4	67	1226	748
2002			7	15	9	8	8	3	4	1	1	56	10	5	71	1251	926
2003				24	20	5	6	12	6	2	3	78	13	2	93	1049	766
2004					18	29	21	15	10	13	6	112	22	5	139	1093	840
2005						18	78	42	30	23	10	201	35	4	240	879	686
2006							85	90	55	33	13	276	79	7	362	751	497
2007								95	97	62	18	272	94	14	380	617	397
2008									60	57	21	138	95	3	236	558	309
2009										23	15	38	59		97	411	186
2010											3	3	59		62	175	137

Panel B : Engagements by Region and Exit Year																	
Asia		1	1		3	8	37	8	35	33	5	131	86	1	218	1013	713
Europe	1	6	4	13	16	21	36	44	51	37	25	254	92	44	390	787	645
N. America	7	14	28	40	37	37	130	210	177	144	60	884	302	1	1187	705	515
Total	8	21	33	53	56	66	203	262	263	214	90	1269	480	46	1795	760	562

Panel C : Engagement Stock by Calendar Year											
	46	101	146	204	285	465	754	918	889	723	571

Table 3 – Activist Ownership Stakes in Target Firms by Region

The table reports the activist fund’s ownership stake as a percentage of the shares outstanding at the disclosure of an intervention via the initial 13D filing in the US or press announcement (initial stake). Ultimate stake reports the maximum stake at the height of the intervention. The results are split by region, with medians reported in brackets. In each region the panel is split between engagements with and without outcomes, reflecting whether the activist was successful in achieving at least one of the stated outcomes.

			Initial Stake	Ultimate Stake
Panel A – All				
All	N 1608	Mean	7.8 (6.1)	11.0 (8.3)
<i>With Outcomes</i>			8.5 (6.7)	11.6 (9.0)
<i>No Outcomes</i>			7.2 (5.6)	10.0 (7.7)
Panel B – Europe				
All	N 353	Mean	5.9 (5.0)	10.1 (7.1)
<i>With Outcomes</i>			5.9 (5.0)	10.5 (7.4)
<i>No Outcomes</i>			5.8 (5.0)	9.8 (7.0)
Panel C – Asia				
All	N 198	Mean	7.2 (5.5)	12.0 (9.1)
<i>With Outcomes</i>			8.8 (7.4)	15.1 (12.5)
<i>No Outcomes</i>			6.9 (5.3)	11.5 (9.0)
Panel D – North America				
All	N 1057	Mean	9.0 (6.9)	11.2 (8.8)
<i>With Outcomes</i>			9.5 (7.2)	12.3 (9.4)
<i>No Outcomes</i>			8.5 (6.4)	10.2 (7.6)

Table 4 – Fund Database Sample

The Table shows the number of cases in the fund database sorted into private and public cases. The public cases between 2000 and 2008 are also contained in the public database. The private cases were not disclosed in regulatory filings or uncovered by the press. They are unique to this sample. Panel 1 shows the number of cases by year. Panel 2 distinguishes between funds that have a predominantly private and a predominantly public engagement strategy.

	Private	Public	Total
Activist Cases	57	74	131
Number of Firms with Blockholders	33		
<i>Panel 1 : Cases by Year</i>			
1997	0	1	1
1998	2	6	8
1999	6	8	14
2000	5	4	9
2001	3	7	10
2002	7	10	17
2003	11	4	15
2004	8	12	20
2005	4	7	11
2006	5	8	13
2007	5	7	12
2008	1	0	1
<i>Panel 2 : Cases by Fund Strategy</i>			
Private Strategy Fund	52	45	97
Public Strategy Fund	5	29	34

Table 5 – Outcomes in the Public Database

The Table shows the number of outcomes in the database by year and outcome type. It is possible that the same company was engaged by multiple funds. In these cases it is possible that the same outcome appears several times in the database. Panel A reports the total number of recorded outcomes. Panel B reports the number of unique outcomes.

Year	Board	Payout	Restructuring	Takeover	Total	Number of Outcomes Per Active Engagement
Panel A : Number of Outcomes Including Multiple Engagements						
2000	4	2	5	8	19	0.41
2001	8	5	15	9	37	0.37
2002	10	12	8	13	43	0.29
2003	29	9	15	14	67	0.33
2004	33	21	28	18	100	0.35
2005	63	27	36	32	158	0.34
2006	94	60	50	77	281	0.37
2007	92	78	59	98	327	0.36
2008	94	61	42	42	239	0.27
2009	77	32	23	25	157	0.22
2010	29	3	19	21	72	0.13
Total	533	310	300	357	1,500	
Panel B : Number of Unique Outcomes						
2000	3	2	5	7	17	
2001	8	5	15	8	36	
2002	10	12	8	13	43	
2003	27	9	15	14	65	
2004	30	18	24	16	88	
2005	59	25	31	29	144	
2006	83	56	46	65	250	
2007	84	75	53	81	293	
2008	82	58	38	40	218	
2009	72	30	20	23	145	
2010	27	3	17	20	67	
Total	485	293	272	316	1,366	

Table 6 – Activist Engagements and Takeovers (2000 – 2010)

The table reports the number of activist interventions by region with the average number of M&A transactions and the number of unsolicited takeover offers. M&A data is from SDC Platinum and relates to announced deals for listed targets with market capitalisations over \$10mm.

Region	Activist Cases	Average per Year	M&A per Year	Unsolicited Bids per Year	Activist Cases Per Listed Firm	Unsolicited Bids Per Listed Firm
UK	168	16.8	158	9	0.006	0.004
Cont. Europe	222	22.2	455	10	0.002	0.001
North America	1187	118.7	1128	33	0.017	0.005
Japan	186	18.6	359	2	0.005	0.0006

Table 7 – Cross-Country Comparison of Activist Shareholder Rights with respect to Shareholder Meetings

Shareholder Powers	US (Delaware) ⁽¹⁾⁽²⁾	UK ⁽¹⁾⁽³⁾	Germany ⁽³⁾	France ⁽³⁾	Italy ⁽³⁾	Sweden ⁽³⁾	Japan ⁽³⁾
Calling an Extraordinary General Meeting	Special meetings can be called under Delaware Corporation Law, but shareholders cannot call these meetings, unless the certificate of incorporation or the bylaws give them this power.	Shareholders holding at least 10% of the company’s voting capital can requisition an EGM; the company’s Articles cannot deprive the shareholders of this right. In 2009 the threshold was lowered to 5%.	5% of the share capital can convene an EGM.	5% of the share capital can request the court of commerce to appoint a ‘mandataire de justice’ to call a General Meeting; however, such decisions have to be based on special circumstances.	A traditionally a minimum shareholding of 10% of the share capital was required. This was lowered to 5% in 2010.	10% of the share capital can convene an EGM.	3% or more of outstanding shares with voting rights held for at least the past 6 months.
Ease of Proxy Solicitation	Possible but expensive. Access to shareholder list is a general right. Registered shares often held in the “street name” by brokers – however, the power to vote extends to the beneficial owner so long as they are a US resident. The proxy material will still make it to the beneficial owner. Estimated average cost of proxy distribution and solicitation \$250k to \$1m (Georgeson). Gantchev (2012) estimates full costs for activist investors are much higher at \$10m for a large cap campaign.	Any person can request access to the shareholder register, although this must be for a “proper purpose”. The entity officially recognized as able to vote is the name on register including the custodians. The underlying beneficiaries do not automatically receive information when a meeting is announced unless they have opted in to the information rights. Solicitation materials are included in the firm’s proxy material at no extra cost to the activist.	Predominantly bearer shares. In the case of registered shares, the register is not public. Shareholders can only request access to their own data, not that of other shareholders. Proxy solicitation at own expense.	Shareholder register is the sole property of the firm – although access can be requested 15 days prior to the general meeting. For bearer shares only intermediaries aggregated positions are available. Proxy solicitation at own expense.	Shareholders can inspect the shareholder list and obtain information at their own expense. Proxy solicitation at own expense.	The shareholder register is made public, so that anyone, at any time, can gain access to information on the ownership structure. Proxy solicitation at own expense.	Any shareholder with a minimum voting unit has the right to inspect and copy the share register of the company upon request. Proxy solicitation at own expense. Estimated cost of proxy solicitation - \$200,000 to \$1m.
Shareholder Proposals (in general)	SEC Rule 14a-8: facilitates access to management proxy materials, but results not binding on board; the rule covers board nominees since 2010, except where there is a change of control. SEC Regulation 14A (full proxy solicitation); cost of distribution and solicitation borne by the shareholder.	5% total voting rights or 100 or more shareholders can compel company to put a resolution to AGM /EGM and to circulate a statement of not more than 1000 words prior to the meeting.	5% of the share capital or a pro rata amount of Euro 500,000 is needed. Submission of counter-motions is more common. One share is sufficient for counter-motion.	0.5% of the share capital. However, certain proposals (including CEO remuneration) are excluded from the shareholder assembly’s responsibility.	Shareholders holding at least 2.5% of the share capital can propose additional items to the agenda.	All shareholders have the right to place additional items on the agenda.	1% or more of outstanding shares with voting rights held for the past 6 months.

Sources: (1) - Becht *et al* (2009), (2) - www.sec.gov, (3) - Georgeson (2008, 2010).

Table 8 – Cross-Country Comparison of Activist Shareholder Rights for Seven countries for Board Elections

Appointment and Removal of Directors	US (Delaware) ⁽¹⁾	France ⁽²⁾	Germany ⁽²⁾	Italy ⁽²⁾	Sweden ⁽²⁾	UK ⁽²⁾	Japan ⁽²⁾
Board Elections	Plurality Voting – Default rule in Delaware; votes in favour are counted for each candidate; the candidate receiving most votes (not necessarily a majority of the votes attending the shareholder meeting) wins.	Majority – however, where there are more candidates than board seats, those with the highest percentage of the shareholder vote are elected (plurality). Usual practice for all board members to be voted on separately.	Simple Majority - Each supervisory board member has to be elected separately. Each shareholder has one (for/against/abstain) vote for each board candidate. Virtually impossible to put up a slate of directors with more candidates than board seats.	Plurality voting for minority slate. The minority candidate(s) who receives the largest number of votes is elected. The same system is used for the majority slate.	Plurality voting - the person(s) who has received the largest number of votes is elected. If two candidates receive the same number of votes, the election is determined by the drawing of lots.	Simple Majority - Separate resolution for each director. Each shareholder has one (for/against/abstain) vote for each board candidate.	Simple majority - Shareholders can vote to approve entire slate or disapprove each specific candidate.
Tenure	Under Delaware law, boards can be staggered so only one third of the directors are elected each year for a three year tenure. Directors can only be removed for cause.	Tenure is determined by the by-laws. The French corporate governance code states that director's term of office should not exceed four years. Majority of shareholders can remove a director without cause.	In practice, the tenure of the shareholder representatives on the supervisory board are usually the same – the statutory maximum of five years. However, it is legally possible to have staggered board terms, although rare. Directors cannot be removed without cause and require a super-majority vote for removal.	The term of appointment of directors cannot be for more than three years. A majority of shareholders can remove a director with or without cause.	One year, unless otherwise prescribed in the articles of association. A board member may also be removed from her appointment at any time by the party that appointed the board member.	Determined by the articles – the standard is to apply for re-election every 3 years. Shareholders can always move to remove a director without cause under statutory powers.	Director's term of office is usually determined by the articles of association, but a majority of shareholders can always move to remove a director without cause.
Restrictions on Voting Power Concentration	Shareholder rights plans ("poison pills") limit the ability of shareholders to concentrate voting power beyond certain thresholds, typically 10-15%; CEMS are available, although not widely used. There is no mandatory bid rule (except in Pennsylvania and Maine).	Limited poison pills. CEMs available. Mandatory bid rule at the 33.3% threshold. Shares held for over two years can have double voting rights.	No poison pills – limited CEMs available. Mandatory bid rule at the 30% threshold.	No poison pills - CEMs available. Shareholder agreements are common. There is a mandatory bid rule (Draghi Decree) at the 30% threshold.	No poison pills – CEMs available. Mandatory bid rule at the 30% threshold.	Poison pills are largely absent from the UK due to strict adherence to pre-emption rights; CEMs rarely used. There is a mandatory bid rule at the 30% threshold.	Court decision in 2006 allowed companies to adopt "poison pill" defences. By 2009, over 600 listed companies had "poison pill" plans. No mandatory bid rule.

Sources: (1) - Georgeson (2008, 2010); (2) - Forum Europaeum (2011).

Table 9 – Abnormal Returns from Block Disclosures in the Public Database (2000 – 2010)

The Table reports the mean (median) compounded cumulative abnormal returns around initial disclosures of share stakes in the public database. The block disclosure can take the form of a press article or a regulatory filing. The mandatory disclosure thresholds differ across countries and timeframes. The abnormal return is for 20 (10) trading days prior to the disclosure filing (day 0) through to 20 (10) trading days post the filing. A market adjusted model (MAR) is used to calculate the difference between the target's buy-and-hold return and the return on the value weighted country all-share index. The returns for the risk adjusted (MM) model are also reported in the top panel. All data is winsorized at the 1% and 99% levels. The top panel presents the statistics for all cases. Panel B splits the cases by region and Panel C by major country. Panel D reports returns for the US using a four factor model.

		CAR[]%			
N			[-1,1]	[-10,10]	[-20,20]
Panel A – Mean Abnormal Returns					
Total	1611	MM	3.3	6.7	7.5
		MAR	3.3	6.7	7.5
		t-stat	16.7	15.4	12.5
		% Pos.	70	68	65
Panel B – Abnormal Returns by Region (Mean and Median)					
North America	1,118	Mean	3.5 (2.2)	7.0 (5.6)	7.4 (5.3)
		t-stat	14.1	12.5	9.7
Europe	308	Mean	2.7 (1.5)	5.1 (3.3)	7.0 (4.8)
		t-stat	6.5	6.5	6.1
Asia	185	Mean	3.3 (1.5)	7.6 (4.0)	8.7 (4.7)
		t-stat	6.1	6.9	5.7
Panel C – Abnormal Returns by Country (Mean and Median)					
United States	1098	Mean	3.4 (2.2)	6.9 (5.5)	7.2 (5.3)
		t-stat	14.0	12.3	9.5
Japan	159	Mean	2.3 (1.2)	6.2 (3.4)	6.6 (4.2)
		t-stat	5.2	6.0	4.5
UK	139	Mean	3.0 (1.6)	5.9 (4.8)	6.9 (6.2)
		t-stat	4.0	4.2	3.5
Germany	41	Mean	3.4 (1.4)	6.6 (4.7)	7.8 (3.2)
		t-stat	3.0	4.1	3.1
France	22	Mean	2.8 (2.1)	4.8 (2.3)	4.4 (4.4)
		t-stat	2.6	2.1	2.1
Italy	33	Mean	0.9 (0.7)	2.2 (1.2)	5.2 (3.3)
		t-stat	1.6	1.9	2.9
Sweden	14	Mean	5.3 (3.3)	8.9 (3.5)	10.1 (6.1)
		z-stat	2.6	2.1	2.4
Panel D – Abnormal Returns FF 4 Factor Model (Mean and Median)					
US	973	Mean	3.6 (2.4)	6.5 (5.2)	5.7 (4.3)
		t-stat	14.2	11.4	8.4

Table 10 – Abnormal Returns from All International Public Engagement Outcomes (2000 – 2010)

The Table reports the compounded mean (median) cumulative abnormal returns around initial disclosures of outcomes in the public database. Panel A splits the outcomes by type. These are categorized as board changes (replacement of the CEO, Chairman or Non-Executive Directors), changes to pay-out policy (share buybacks or increased/special dividends) and restructuring. The last category is split between takeovers (the target firm is acquired by a strategic buyer or private equity fund) and other restructuring which includes divestitures and spin-offs of non-core assets, and blocking diversifying acquisitions. A market adjusted model is used to calculate the difference between the target's buy-and-hold return and the return on the value weighted country all-share index. Z-stats are presented to check robustness.

Outcomes	N		CAR[]%		
			[-1,1]	[-10,10]	[-20,20]
Panel A – Mean Abnormal Returns					
Total	1,372	Mean	3.8 (1.2)	6.6 (3.8)	7.0 (4.0)
		z-stat	12.4	13.0	11.7
		% pos.	62	65	62
Panel B – Outcome Abnormal Returns by Outcome Type (Mean)					
Board	492	Mean	0.0 (0.0)	3.8 (1.9)	3.7 (2.5)
		z-stat	1.6	3.7	3.3
Payout	284	Mean	2.2 (1.3)	2.1(2.4)	2.6 (0.9)
		z-stat	6.6	3.9	2.7
All Restructuring	591	Mean	7.0 (2.9)	11.0 (6.5)	12.1 (8.5)
		z-stat	12.2	13.3	12.3
<i>of which</i>					
Takeovers	322	Mean	11.0 (4.8)	15.2 (8.7)	17.1 (12.0)
		z-stat	11.6	11.9	11.8
Other types	269	Mean	2.4 (1.6)	5.8 (4.4)	6.1(4.1)
		z-stat	5.0	6.3	4.9

Table 11 – Public Database BHRs by Asset Pricing Model and Region (2000 – 2010)

The Table reports the mean (median) compounded cumulative abnormal returns, using multiple asset pricing models. The models are applied to three different long term buy-and-hold windows. A risk adjusted market model and a market adjusted model are used to calculate the difference between the target's buy-and-hold return and the return on the value weighted country all-share index. The raw returns are also reported. All data is winsorized at the 1% and 99% levels. The top panel presents the statistics for all cases. Panel B splits the cases by region. Panel C reports returns for the US using a four factor model. *, ** and *** indicate statistical significance at the 10%, 5% and 1% levels.

Total	N		- 20 Days to Exit	Disclosure to Exit	CAR[]%
					+ 20 Days to Exit
Panel A – Abnormal Returns					
MM	1655	Mean	33.6 (15.4)***	27.5 (12.3)***	27.2 (10.0)***
MAR			35.9 (18.9)***	32.2 (16.5)***	28.2 (12.4)***
Raw			39.8 (22.9)***	35.9 (19.4)***	31.7 (15.5)***
Panel B – Abnormal Returns by Region					
North America	1,134	Mean			
MM			43.5 (17.6)***	34.9 (15.4)***	37.4 (13.7)***
MAR			42.1 (18.7)***	37.4 (16.3)***	34.1(12.7)***
Raw			48.5 (25.2)***	43.7 (21.4)***	40.1 (18.6)***
Europe	331	Mean			
MM			35.0 (18.4)***	30.3 (12.7)***	24.9 (10.7)***
MAR			22.8 (19.5)***	20.7 (19.3)***	17.3 (14.1)***
Raw			28.5 (26.3)***	26.3 (22.7)***	21.3 (21.3)***
Asia	190	Mean			
MM			-27.1 (-3.4)	-24.1 (-5.5)**	-28.9 (-13.4)
MAR			21.4 (19.1)***	18.4 (15.9)***	13.3 (8.5)***
Raw			8.5 (0.0)**	5.5 (-0.2)**	0.6 (-0.3)
Panel C – US Abnormal Returns					
4 Factor Model FF	971	Mean	30.2 (18.5)***	28.5 (14.3)***	24.3 (10.5)***

Table 12 – Contribution of Disclosure and Outcome Returns to Total Returns (2000 –2010)

The Table shows the contribution of disclosure abnormal returns and abnormal returns associated with observable outcomes to total buy and hold abnormal returns (BHAR). All data is winsorized at the 1% and 99% levels. A market adjusted model is used to calculate the difference between the target's buy-and-hold return and the return on the value weighted country all-share index. Column 1 reports the number of engagements, Column 2 the mean and median BHAR from disclosure to exit. Column 3 the mean and median cumulative abnormal disclosure returns for the 41 day window and Column 4 the sum of cumulative abnormal returns around observable outcomes, also for a 41 day window. The next four columns breakdown the outcome disclosure returns into the four main categories (Board, Payout, Restructuring and Takeover). Overlaps between outcome windows are not excluded, but are relatively rare, with only 7.9% of outcomes overlapping in a 41 day window (and 3.5% in a 21 day window). Panel A shows the results for all cases, distinguishing between engagements with and without outcomes. Panel B stratifies the sample by region (Europe) and Panel C reports results for Asia and Panel D for North America. *, ** and *** indicate statistical significance at the 10%, 5% and 1% levels.

	Number of Cases		Disclosure Abnormal Returns [-20,20]	BHAR from 20 Days Post Disclosure to Exit	Average of Sum of Abnormal Returns around Outcomes [-20,20]				
					All	Board	Payout	Restructuring	Takeovers
Panel A – All Cases					N=290	N=158	N=143	N=247	
All	1655	Mean	7.5***	28.2***					
		Median	5.2***	12.4***					
<i>Outcomes</i>	793	Mean	9.5***	34.2***	9.0***	2.7	1.8	9.1***	15.3***
		Median	6.5***	19.4***	3.9***	1.5	0.1	3.9***	5.8***
<i>No Outcomes</i>	862	Mean	5.6***	22.7**	0.0				
		Median	3.9***	7.6**	0.0				
Panel B – Europe					N=52	N=23	N=46	N=60	
All	331	Mean	7.0***	17.3***					
		Median	4.8***	14.9***					
<i>Outcomes</i>	166	Mean	8.9***	28.3***	10.8***	3.1	6.6**	4.0	18.9***
		Median	6.8***	23.7***	4.5***	0.0	2.8**	0.0	12.2***
<i>No Outcomes</i>	165	Mean	6.1***	6.6*	0.0				
		Median	3.9***	5.2*	0.0				
Panel C – Asia					N=8	N=16	N=10	N=5	
All	190	Mean	8.7***	21.8**					
		Median	4.7***	11.0**					
<i>Outcomes</i>	32	Mean	22.6**	33.7***	3.9	0.1	3.6	6.9	3.2
		Median	13.3**	25.0***	0.7	7.6	0.3	7.1	-1.2
<i>No Outcomes</i>	158	Mean	4.5**	9.9	0.0				
		Median	0.3	8.8	0.0				
Panel D – North America					N=230	N=120	N=87	N=182	
All	1134	Mean	7.5***	34.1***					
		Median	5.3***	12.3***					
<i>Outcomes</i>	595	Mean	8.9***	36.8***	8.7***	2.7*	0.7	12.1***	15.0***
		Median	5.8***	17.2***	4.1***	3.8*	0.0	7.5***	4.0***
<i>No Outcomes</i>	539	Mean	5.9***	31.6***	0.0				
		Median	4.2***	7.6***	0.0				

Table 13 – Public Database Buy and Hold Returns by Calendar Year (2000 – 2010)

The Table reports the mean (median) compounded cumulative abnormal returns by year, using multiple asset pricing models. A risk adjusted market model and a market adjusted model are used to calculate the difference between the target's buy-and-hold return and the return on the value weighted country all-share index. The raw returns are also reported. All data is winsorized at the 1% and 99% levels. The panels split the cases by region. *, ** and *** indicate statistical significance at the 10%, 5% and 1% levels. The z-statistic is calculated with a Wilcoxon signed-rank test.

Panel A – Abnormal Returns Europe					
	N	Mean	MM	MAR	Raw
2000	13		126 (6.7)	139 (18.9)	134 (13.4)
2001	17		16.2 (13.8)	52 (19.3)**	41.7 (9.7) **
2002	31		-10.1 (-16.4)	-2.6 (7.9)	-22.2 (-14.9)
2003	43		21.1 (15.8)***	15.3(13.6)**	28.5 (27.1)***
2004	66		4.1 (5.5)	13.4 (12.8)***	21.5 (21.0)***
2005	96		9.4 (4.8)**	8.3 (4.9)***	23.1 (17.3)***
2006	138		6.2 (7.7) **	11.2 (8.9)***	24.1 (21.1)***
2007	173		-7.0 (-2.1)	-2.5 (1.1)	0.47 (2.9)
2008	166		-23.4 (-10.6)	-12.4 (-4.0)	-45.3 (-41.0)***
2009	132		56.2 (42.3)	20 (11.6)	38.9 (34.9)***
2010	110		-7.0 (1.7)	10.1 (14.0)**	18.8 (20.3)***
Panel B – Abnormal Returns Asia					
	N	Mean	MM	MAR	Raw
2000	1		15.0	52.1	28.6
2001	3		66.7 (33.5)	33 (25.2)**	13.8 (7.7)**
2002	6		1.1 (0.0)	26.5 (24.2)**	15.4 (11.0)
2003	9		16.5 (19.4)	25.9**	46.8 (41.6)***
2004	29		0.0 (42.4)	16.2 (11.6)***	22.3 (12.0)***
2005	67		-11.1 (-5.2)	-2.5 (-3.9)	23.5 (18.9)***
2006	102		-17.6 (-11.5)	0.5 (0.0)	2.0 (0.0)
2007	123		- 6.2 (1.0)	2.0 (4.7)	-2.4 (0.0)
2008	135		- 4.3 (0.0)	10.3 (18.8)***	-29.0 (-21.8)***
2009	105		9.0 (5.3)	0.4 (-2.2)	10.7 (6.7)**
2010	73		-18.2 (-18.7)***	12.2 (10.0)***	15.9 (11.6) ***
Panel C – Abnormal Returns North America					
	N	Mean	MM	MAR	Raw
2000	29		15.4 (13.9)***	20.3 (28.5)***	12.7 (15.7)**
2001	77		6.3 (4.2)	19.3 (12.5)***	14.8 (11.0)***
2002	102		15.3 (0.0)	46.4 (22.8)***	32.1 (10.0)**
2003	138		17.9 (6.3)***	20.7 (9.4)***	38.5 (26.8)***
2004	171		-0.9 (0.0)	22.3 (9.1)***	29.7 (15.4)***
2005	267		-10.3 (0.0)	2.1 (4.6)	7.3 (8.6)***
2006	463		4.7 (4.4) ***	3.0 (3.9) *	13.5 (13.4) ***
2007	568		-10.0 (-2.2)	-11.3 (-2.1)	-7.2 (0.0)
2008	537		3.9 (5.0)	0.0 (5.4)	-27.0 (-18.3)
2009	445		70.7 (32.8)***	55.5 (24.5) ***	74.0 (43.4)***
2010	331		-27.8 (-10.2)***	21.1 (13.0) ***	33.6 (26.2)***

Table 14 – Abnormal Returns from Block Disclosures in Fund Database

The Table reports the compounded cumulative abnormal returns around initial disclosures in the fund database. The disclosure can take the form of a press article or a regulatory filing – which ever appears first. Panel 1 reports the abnormal returns by fund style. Panel 2 report returns for targets which were subsequently taken over.

		N	CAR[]%		
				[-10,10]	[-20,20]
Panel A – Mean Abnormal Returns					
Period 1997 - 2008					
Total	74	Mean	4.74	7.57	
		t-stat	2.55	3.23	
Panel B - Abnormal Returns by Fund Style					
Private Strategy Funds	45	Mean	1.72	2.23	
		t-stat	0.79	0.92	
Public Strategy Funds	29	Mean	9.41	15.86	
		t-stat	2.96	3.83	
Panel C – Abnormal Returns for Companies that were subsequently taken over					
Takeovers	12	Mean	7.23	9.28	
		t-stat	1.30	1.37	

Table 15 – Abnormal Returns for Engagement Outcomes in Fund Database

The Table reports the compounded cumulative abnormal returns around initial disclosures of outcomes in the complete fund database from 1997 to 2008. Panel 1 splits the outcomes by type. As in table 4, these are categorized as board changes (replacement of the CEO, Chairman or Non-Executive Directors), changes to payout policy (share buybacks or increased/special dividends) and restructuring. The last category is split between takeovers (the target firm is acquired by a strategic buyer or private equity fund) and other restructuring which includes divestitures and spin-offs of non-core assets, and limiting diversifying acquisitions.

Outcomes			CAR]%	
N			[-10,10]	[-20,20]
Panel A – All Outcomes				
All Engagements	319	Mean	3.15	4.96
		t-stat	5.04	6.17
Private	124	Mean	5.38	8.27
		t-stat	4.73	6.33
Public	195	Mean	1.73	2.87
		t-stat	2.45	2.89
Panel B – Board Outcomes				
All Board	88	Mean	1.43	2.91
		t-stat	1.15	1.91
Private	26	Mean	4.58	9.77
		t-stat	1.43	3.49
Public	62	Mean	0.11	0.15
		t-stat	0.10	0.09
<i>Of which</i>				
CEO				
Private	9	Mean	2.78	7.47
		t-stat	0.66	3.16
Public	23	Mean	1.99	2.17
		t-stat	1.23	1.18
Chairman				
Private	9	Mean	11.56	15.07
		t-stat	1.52	2.21
Public	10	Mean	0.32	1.43
		t-stat	0.08	0.33
Panel C – Payout Outcomes				
All Payout	42	Mean	2.97	4.51
		t-stat	2.27	2.71
Private	15	Mean	4.44	4.69
		t-stat	2.03	1.93
Public	27	Mean	2.15	4.41
		t-stat	1.31	1.97

Table continued – Abnormal Returns for Engagement Outcomes in Fund Database

Outcomes		CAR[] %		
Panel D – Restructuring Outcomes				
	N		[-10,10]	[-20,20]
Private	83	Mean	5.80	8.47
		t-stat	4.37	5.01
Public	106	Mean	2.57	4.06
		t-stat	2.49	2.90
<i>of which</i>				
All Takeovers	20	Mean	14.36	18.31
		t-stat	4.10	4.99
Private	6	Mean	21.29	27.66
		t-stat	3.14	2.86
Public	14	Mean	11.38	14.30
		t-stat	2.87	4.86
Other Restructuring	169	Mean	2.76	4.54
		t-stat	3.53	4.16
Private	77	Mean	4.59	6.97
		t-stat	3.69	4.47
Public	92	Mean	1.23	2.51
		t-stat	1.28	1.68

Table 16 – Contribution of Disclosure and Outcome Returns to Total Return in Fund Database

The Table is similar to Table 15 but refers to the Fund Database. Panel A shows the results for all cases, distinguishing between engagements with and without outcomes. Panel B stratifies by public engagements with a known block disclosure date and private engagements that were not disclosed.

	Number of Cases		Mean BHAR from Disclosure to Exit	Disclosure Abnormal Returns [-20,20]	Sum of Abnormal Returns Around Outcomes [-20,20]
Panel A – All Cases					
All	131	Mean	8.3	N.A.	N.A.
		t-stat	1.5	N.A.	N.A.
<i>With Outcomes</i>	90	Mean	15.8	N.A.	19.5
		t-stat	2.1	N.A.	4.6
<i>No Outcomes</i>	41	Mean	-8.3	N.A.	N.A.
		t-stat	-1.1	N.A.	N.A.
Panel B – Abnormal Returns for Public vs. Private Cases					
Public Cases:	74	Mean	6.9	7.7	N.A.
		t-stat	0.9	3.3	N.A.
<i>With Outcomes</i>	57	Mean	12.9	7.1	10.4
		t-stat	1.5	2.7	2.8
<i>No Outcomes</i>	17	Mean	-13.3	9.6	N.A.
		t-stat	-1.0	1.9	N.A.
Private Cases:	57	Mean	10.0	N.A.	N.A.
		t-stat	1.1	N.A.	N.A.
<i>With outcomes</i>	33	Mean	20.7	N.A.	35.0
		t-stat	1.5	N.A.	4.0
<i>No Outcomes</i>	24	Mean	-4.8	N.A.	N.A.
		t-stat	-0.5	N.A.	N.A.

Figure 1 – Public Engagement with Form 13D Disclosure

In the international public database an activist engagement is assumed to begin ($t=3$) when the regulatory block disclosure is crossed or an activist engagement is first disclosed in the press ($t=2$). The engagement is assumed to end when the activist fund's stake falls below the regulatory threshold ($t=6$). When the regulatory filing takes the form of an SEC Form 13D, the intention of the activist fund must be disclosed. With the exception of France at the 10% threshold, there is no such requirement in Europe. Press articles or leaked letters might contain information about activist demands in Europe. In Japan, activists must file disclosure documents when they breach the 5% regulatory threshold, and from 2007 disclose whether they intend to make "important suggestions" to management. The analysis in previous hedge fund activism literature is based on this type of timeline.

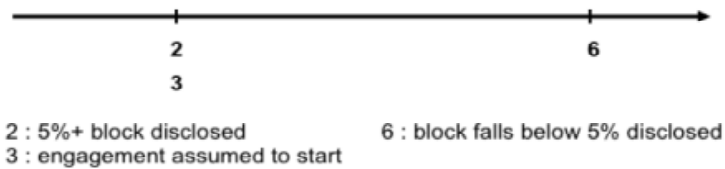


Figure 2 – Public Engagement with Disclosed Outcomes

In the international public databases, activist demands might be disclosed at $t=2=3$. When this is the case the date these demands yield outcomes is catalogued ($t=4$).



Figure 3 – Fully Observed Public Engagement

The European Fund database contains complete information about public shareholder engagements based on proprietary information obtained from activist funds. In addition to the public entry and exit dates ($t=2$ and $t=6$) the first share purchase date ($t=1$) is observed and the date a fund closed its position ($t=7$). Also observed is the time that elapses between these dates, to distinguish between a pre-disclosure period, a public holding period and a post-disclosure period. The sum of these periods is the holding period for the stock. The date the engagement started is known, which could be before, or after the block disclosure, dependent on whether a regulatory threshold is breached. The engagement objectives are also known. If the outcome of the engagement is successful, all disclosed outcomes can be identified ($t=4$).

